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Official Report of Debates (Hansard)

Friday 24 May 1996

Journal des débats (Hansard)

Vendredi 24 mai 1996

Standing committee on social development

Comité permanent des affaires sociales

Education Amendment Act, 1996

Loi de 1996 modifiant la Loi
sur l'éducation



Chair: Richard Patten
Clerk: Lynn Mellor

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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
SOCIAL DEVELOPMENTCOMITÉ PERMANENT DES
AFFAIRES SOCIALES

Friday 24 May 1996

Vendredi 24 mai 1996

The committee met at 0900 in the Holiday Inn, Sault Ste Marie.

EDUCATION AMENDMENT ACT, 1996

LOI DE 1996 MODIFIANT LA LOI
SUR L'ÉDUCATION

Bill 34, An Act to amend the Education Act / Projet de loi 34, Loi modifiant la Loi sur l'éducation.

The Vice-Chair (Mr John Gerretsen): Good morning, ladies and gentlemen. Welcome to our public hearings into Bill 34. This is the fourth of four days of hearings that we're holding throughout Ontario. The committee has been to Windsor, Ottawa and Thunder Bay, and is in Sault Ste Marie today. For those people who are here to present, you'll have a half an hour for your presentation, which will include any time for questions and answers. From past experience, it's always been extremely worthwhile to get the comments and the various questions from the various caucuses.

On my right is the government caucus, and today we're welcoming Mr Parker and Ms Munro.

Mr Toni Skarica (Wentworth North): And Mr Smith; don't leave him out.

The Vice-Chair: And Mr Smith. No, Mr Smith was here yesterday too — or at least in Thunder Bay.

On the left side here are the official opposition and the New Democratic Party. I believe all three gentlemen were here yesterday as well, or at least in Thunder Bay.

ONTARIO ENGLISH CATHOLIC
TEACHERS' ASSOCIATION,
NORTH SHORE UNIT

ONTARIO TEACHERS INSURANCE PLAN

The Vice-Chair: Our first delegation today is the Ontario English Catholic Teachers' Association, the North Shore Unit. I understand that Sharon Anderson, the president, is here, together with Randy McGlynn and Mark Cazabon. I guess there's someone else with you as well that I'm not aware of. Perhaps you could introduce yourselves for Hansard's purposes and then you may proceed with your presentation.

Miss Sharon Anderson: Sure. Good morning. I am Sharon Anderson, from the North Shore unit of the Ontario English Catholic Teachers' Association. To my right are Mark Cazabon and Randy McGlynn, executive directors from OTIP, which is the Ontario Teachers Insurance Plan. To my left is Jim Smith, our second vice-president from our provincial office of OECA.

The focus of our presentation today will be on teacher sick leave credits. I am a grade 8 teacher. I am pleased to

have the opportunity to speak here this morning. It's very refreshing at 9 o'clock in the morning to speak to people whose hair is not dyed in orange, purple and pink, as most of my grade 8 students have lately.

I'm sure we are all aware that the education sector is not alone in its use of sick leave credits; most industries have some type of system in place in their collective agreements. When we examine the communities along the North Shore, for example, we recognize that industries and businesses all carry some type of sick leave program or system, whether these be in place within the nursing or law enforcement professions or within our mill and mining industries.

Specifically in the education sector, though, the one difference that we are aware of is that data from Statistics Canada show that in 1994 absenteeism among teachers was lower than the labour force as a whole. Interestingly, in September 1995, 11,520 people received UI sick benefits. Statistics Canada further reports that only 90 of these 11,520 were teachers; that is, 0.78%. Stats Canada further assures us that this is a fairly normal month.

Teachers do not abuse the use of sick leave. There are safeguards in place to discourage this. In our local board, for example, the board still maintains the right to request a medical certificate or other documentation as proof of our legitimate absenteeism.

One distinct difference between the teaching profession and other occupations is that it is actually a terrible inconvenience and increases our workload to be away. Yes, currently we are entitled to sick leave, but what we are painfully aware of is that we are still responsible for that day. We must see that a preplanned program and individual lessons are clearly outlined and activities set for the day. Any teacher will tell you of their personal experience of having to drag themselves from their death beds or, in the case of the flu season, the family toilet bowl, literally drag themselves into work to set in place an action plan for their replacement for that day. Upon return, we must follow up this work and any other circumstances which might have transpired during the absenteeism.

Teachers are also very much aware that it is oftentimes the very profession itself that makes us more susceptible to illness. On a daily basis we are exposed to hundreds of children and adults. Schools are virtual pools of exposure to many communicable diseases. Workers in education and health services are at a far greater risk than in the population at large.

A typical junior grade teacher, for example, might have a class of 31 students, as is the case in my school. Just as he begins his program in September and October, he is faced with the outbreak of fall colds. This is quickly

followed by the flu season, then the chicken pox, then strep throat, and even today we can't count out the measles. I won't even at this time expand on the lice outbreak that no one is immune from and the teacher who had to spend much time washing down her classroom late into the evening.

Further to that, the amount of stress that is a direct result of the profession accounts for much sick leave, yet teachers continue to resist being away because of their dedication to the profession and the students entrusted to them. It is unfortunate at this time that teachers are now having to defend innuendo and unsubstantiated political rhetoric with regard to the sick leave credit system.

I thank you for your time this morning and I will pass over the rest of the presentation to the OTIP officers.

Mr Mark Cazabon: Mr Chairman, ladies and gentlemen, at the outset, on behalf of the Ontario Teachers Insurance Plan, I wish to thank the North Shore OECA branch affiliate for including us in their submission and for providing us with an opportunity to make a brief presentation to your committee. Randy McGlynn and I are officers of OTIP-RAEO.

The Ontario Teachers Insurance Plan was established through cooperative efforts of the five affiliates of the Ontario Teachers' Federation as a not-for-profit trust to provide insured benefits to teachers and other educational workers in Ontario. Since its establishment in 1977, OTIP has always maintained as its primary focus the provision of long-term disability insurance plans in education. Today, over 75,000 Ontario teachers and educational workers are insured for long-term disability provisions through OTIP. As such, OTIP provides LTD insurance through 134 school boards in Ontario.

The purpose of our presentation today is to provide information to your committee on LTD-related issues and to review potential repercussions that may result from changes to the teachers' cumulative sick leave plans. I will deal with the first part of the presentation and Randy will focus on the possible ramifications resulting from changes to cumulative sick leave plans.

As you are certainly aware, stress-related leave for Canadian workers has increased significantly over the last decade. Faced with double-digit unemployment figures, downsizing, layoffs, reduced staff and increased family pressures, Canadian workers are now taking more stress leave than at any other time in history. This trend is driving down productivity, increasing the number of mental and nervous LTD claims and driving up LTD insurance premiums. Overall, industry-wide, mental and nervous claims accounted for 19% of all group LTD claims in 1994.

0910

Teachers and educational workers are not immune to the general stressors referred to previously. A good case can be made that this group of employees is currently exposed to greater stress conditions than ever before and to a greater extent than other professions and occupational groups. This fact is confirmed through studies which show that the education system is outpacing other sectors by as much as four times in the number of mental and nervous LTD claims. While 42% of all LTD claims in the education sector are due to mental and nervous

conditions, this type of claim accounts for 19% of LTD claims of blue-collar workers and those in the health sector, 29% of claims of other professional workers and 9% of LTD claims of technical workers.

As indicated, general economic conditions and related stressors also affect teachers. In addition, in light of their primary client base, teachers are impacted by societal factors that affect the school environment. Among these are changes to the family unit, with all the school-related challenges of single-parent families, immigration and the challenges of serving diverse cultural needs, changing curriculum and the imperatives of modern technology in education. The list could easily be expanded to include the added pressures of the current climate of budget slashes, layoffs, school closures and reductions in services to children with special needs.

All these factors combine to create a work environment that is highly stressful for teachers and educational workers and illustrate the conditions leading to the high levels of mental and nervous LTD claims in the education sector.

We felt it was important for you to have this type of background information on LTD claims in the education sector. Another important statistic is that related to claims per 1,000 insured lives. For educational workers, claims are running at a ratio of 15 claims per 1,000 insured, whereas the overall industry average runs at approximately nine to 10 claims per 1,000 insured.

In looking to the absence rate statistics related to day-to-day or short-term absences, the trends referred to above reverse themselves. Where other occupations would have a high incidence rate of annual average days per year absenteeism, elementary and secondary teachers have lower absenteeism rates on a day-to-day basis.

In days lost per worker in a year, the 1994 StatsCan report confirms that elementary and secondary school teachers had an absence rate of 7.8 days per year per employee, where all industries and occupations had an absence rate of 9.2 days per employee. The public administration rate was 10.2, medicine and health was 16.6 days per employee, and nursing had an absence rate of 19.6 days per worker per year. These figures measure the number of days lost per worker in a year and are adjusted to reflect the actual length of the work year in the sector measured.

On the basis of this information, one may conclude that teachers are, on average, generally absent from work less than other employee groups on a day-to-day basis. One could conclude that there is more pressure on teachers to remain at work even when an illness day may be warranted. This pressure is one that teachers easily understand: the needs of 25 to 30 or 35 children in an elementary classroom or the needs of 120 to 140 secondary school students. On the basis of our LTD claim experience, we note that teachers file their LTD claims near the very end of the waiting period, indicating their anticipation of returning to work without the necessity of going on LTD.

In addition to the personal commitment factor, we understand that other pressures exist within the system that influence teachers to remain at work even when they are rightfully eligible for sick leave. These pressures are

due to the fact that many school boards, faced with budget constraints, limit access to supply teachers for coverage of the absent teacher's class. This means that other teachers must cover for the absent teacher or that the pupils are reassigned to other classes for the day.

Based on our experience and information, we find no data to support the need for modifying the existing sick leave provisions for elementary or secondary teachers. We believe any tinkering with the present system may prove to be cost-ineffective and lead to greater utilization; it will most assuredly lead to increased administrative costs and could impact negatively on the cost of fringe benefits, particularly if the existing system were to be replaced by an insured, short-term disability type program.

Mr Randy McGlynn: In this section of our presentation, we will comment on the current method of replacing income for disabilities that are short-term. We will also comment on the current marketplace demographics and environment. Finally, the issues of alternatives to the current replacement income program will be raised, including cost factors. Our conclusions will include comments on the best approach to replacing disability income and the process changes needed to improve results in the future.

The issue of replacing income while people are unable to work due to a disability caused by either an illness or an accident is a challenge that's faced by all organizations. The rate of disability has increased from 10.4% of the population in 1986 to 12.7% in 1991. This information was made available through the most recent StatsCan study in 1992 in their health and activity limitations survey. In 1994 the Canadian survey on disability and workers' compensation programs found two thirds of 860 human resource professionals indicated managing short-term and long-term disabilities was the most crucial issue they faced.

There are several causes for this increase in disability claims. The incidence of disability is significantly impacted by age. The following is a representative demographic breakdown of the teacher community in Ontario. To summarize, 74% of the population currently being served by replacement income programs is 40 years of age or older.

Stress in the workplace is another factor. Recent studies have shown that workplace stressors are on the rise. Disability statistics in education validate this assessment. In addition to the rise in stress-related claims, new and more prevalent illnesses are further increasing the incidence of disability as opposed to replacing other illnesses. These diseases include chronic fatigue syndrome, carpal tunnel syndrome and fibromyalgia.

The present replacement income program has had to respond to all these challenges. It is not surprising that claims results are on the rise.

Is there a better way to manage replacement income programs? At OTIP-RAEO, we believe that the answer lies not in the system that is used but in the processes that are adopted in the future as preventive measures.

One alternative to the current sick leave program is a replacement income plan which is managed externally. The plan would operate in conjunction with long-term

disability plans so that replacement income would commence at the date of disability and there would be a seamless transfer through the entire disability period, which would terminate on return to work, death or retirement.

In order to design a replacement income program with an external party, it is necessary to examine the existing long-term disability plans. The average waiting period for long-term disability programs is 107 working days. The average cost is 1.3% of salary. For every reduction of 10 working days in the waiting period, the cost would increase by 6.05%. This is a significant difference that needs to be considered when evaluating the approach to short-term replacement income.

Other factors include:

Confidentiality of information due to outsourcing claims adjudication and required communication back to the employer and claimant.

Timely benefit payments to replace income will be affected by the process of submission, investigation and adjudication of the claims. This delay adds stress to the claimant and additional work to the employee benefits administration department at the board of education.

There will be problems with the administration of pension plan contributions. Like sick leave, an alternative replacement income program will be required, in addition to providing benefits, to make contributions to the Ontario Teachers' Pension Plan Board. These contributions would have to be made on the basis of working days and represent 8.9% of per diem salary. Our experience with this is that third-party private administration companies have great difficulty in administering a two-phase system that requires contributions to two different parties.

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Coordination of claims to assist in an orderly return to work when the individual claimant's good health is restored is another issue. Who will take responsibility for the required workplace modification, rehabilitation of the individual and coordination of the staffing and in-school needs?

As is the case with pension contributions, there will be a problem with the benefit payments made to the individual. The teacher is compensated on a per diem basis and this calculation needs to be reflected in the actual benefit payments made to the individual versus the norm, which is the annual salary divided by 52 weeks. Third-party administrators will have difficulty adjusting their systems to accommodate this requirement.

Now let's look at the costs to administer this program.

When you examine the specific modifications that we've just described, there will be retention charges — that's insurance lingo for cost for administration — required by the third-party administrator that will be higher than those currently experienced by the board. This will include the cost of investigation, adjudication, medical reports, visitations, communications and contact with board officials. In addition, there will be the actual cost of record keeping, including payments to the two required sources: the individual and the pension board.

The board will also be required to pay premium tax on, at the very least, the retention charges. This will depend

on the funding vehicle selected, the most likely being administrative services only.

Earlier we discussed the impact on long-term disability premiums should the waiting period be reduced. It is also important to keep in mind the unemployment insurance premium reduction. If the replacement income plan does not continue to qualify for the UI premium reduction, then the board and the teachers would be forgoing a rebate that, at the maximum, reduces premium by a total of \$132.31 per employee per year. Seven twelfths of this or \$77.13 is the savings realized by the board. The minimum requirement to qualify is a program which provides 75 working days of benefit per disability. The maximum waiting period permitted is 14 calendar days.

When considering these issues, and particularly when examining the costs and delivery of a timely, well-managed replacement income program, it becomes apparent that third-party administration is not a viable alternative. The replacement income aspect of the sick leave program has served educators well in the past. It is our view that an empathetic, well-managed plan best serves those people who unfortunately need to collect the benefits of this program.

The real issue is serving the healthy people and/or those who, in the past, have chosen not to utilize this benefit. It is this group that requires assistance.

As we indicated, today success depends upon coordinated disability care and post-disability management to assist those members who have returned to work. Tomorrow's success requires a focus on the pre-disability period. This includes, and this is key, promoting wellness programs, accessible and complete employee assistance programs, safety programs and ergonomic reviews, not changes to the current sick leave arrangements.

Organizations that put their emphasis here will see the most significant improvements — and that's dollars — and have a more satisfied workforce, which should lead to improved morale and improved productivity.

In concluding this presentation, we wish to emphasize that, in our view, the current legislated sick leave plan is the best vehicle to ensure adequate protection in relation to short-term illness absenteeism. Further, the accumulation of sick leave credits provides the level of protection required to bridge waiting periods from short-term illness to long-term disability benefits. This area is the most essential protection afforded through current legislation.

In our view, sick leave credit accumulation to bridge LTD waiting period requirements needs to be preserved. To do otherwise would generate administrative problems, increase the cost of LTD plans and increase hardships associated with long-term illness. In fact, in our view, there are no real savings in dismantling the current cumulative sick leave plans.

Mr Bud Wildman (Algoma): I have two questions: The first deals with your very detailed presentation. I appreciate it and I understand the main point you're making, that the proposal to have a different approach doesn't save money and won't serve the people it's supposed to serve. But, frankly, isn't the main point of what the government is proposing in Bill 34 with regard to these changes that the government wants to enable boards to avoid having to pay retirement gratuities?

Mr Jim Smith: Obviously that's one of the thrusts of what the government is proposing, I don't think there's any question about that, but our real concern at this stage of the game is the bridging aspect towards LTD and the impact immediately on the physical and mental wellbeing of our teachers.

Mr Wildman: The other question I have relates to page 3 of the presentation that was just finished. In the top paragraph you list a number of the stresses that have led to claims, and at the end of that paragraph you say, "This list could easily be expanded to include the added pressures of the current climate of budget slashes, layoffs, school closures and reductions in services to children with special needs."

The government has made it very clear, time and again, that the reductions they are making, the 16% reduction in the transfer payments, the general legislative grants, will not affect the classroom. So how on earth is it that there are layoffs of teachers, school closures and reductions in services to children with special needs? Is this just because the boards have not done their job and they are not really concerned with serving children in classrooms?

Miss Anderson: I'd like to answer that. The pressures that we're speaking of do include budget slashes, layoffs, school closures and the delivery of special needs to children. In fact, my board just two weeks ago passed their budget for the next few months, and of course they had to deal with the budget cuts that were outlined for them. One of the cuts they made was that there would be a reduction of resource withdrawal and special-needs programs and that those children would be integrated more into the regular classroom. This of course adds burdens to not only the students but the teachers as well, and these children are going to be integrated at a very large increase in time.

Mr Wildman: What about class sizes? Are they increased?

Miss Anderson: Yes, class sizes have increased as well, very significantly.

Mr Peter L. Preston (Brant-Haldimand): Two questions, first of all to OTIP: You will cover long-term income disability for anybody across Ontario that's involved in the education system. Is that correct?

Mr McGlynn: That's correct.

Mr Preston: What reason would a presenter have for telling us he can't even get a quote on LTID?

Interjection.

Mr Preston: I wasn't going to mention a name, but somebody told us they couldn't even get a quote.

Mr Richard Patten (Ottawa Centre): OSSTF.

Mr McGlynn: I wasn't there so I'll comment on the marketplace, if I might. The insurance marketplace is very suspicious of providing long-term disability to educational employees because of the incidence of claims. I assume that was the message the individual was giving. Certainly you are able to get a quote because we would be willing to provide a program. They may not have liked the price based on the incidence of disability and the rate that develops from that, but you would be able to get a price.

Mr Preston: That wasn't what was said. It was, "I can't even get a quote."

If quality and criteria were maintained, knowing that early childhood education is a very important matter, what are your comments regarding alternative sites and differentiated staffing, if quality can be maintained? That comes to the federation.

0930

Mr Jim Smith: First of all, the premise that if quality can be maintained we believe is faulty. We do not believe that quality of program delivery in the early childhood education area of specifically JK can be maintained by substituting unqualified, uncertified teachers, and so from that perspective, we're adamantly opposed to —

Mr Preston: No, that's not the perspective I put to you, sir. I'm saying if quality can be maintained. I have not yet been able to get an answer to this question. I would like to find one.

Mr Jim Smith: We might say if pigs could fly too, but the point is we don't believe —

Mr Preston: You're not willing to give me an answer to that, if quality can be maintained.

Mr Jim Smith: We do not believe —

Mr Preston: Thank you very much.

Mr Jim Smith: — that quality can be maintained.

The Vice-Chair: Let the gentleman answer.

Mr Preston: He won't answer my question.

The Vice-Chair: I'm sorry. He's been cut off a few times. Go ahead, sir.

Mr Jim Smith: As I said, I think you're beginning from a premise that we do not believe is sound.

Mr Preston: Well, give me that.

Mr Jim Smith: We do not believe that quality can be maintained by substituting unqualified teachers any more than I believe that quality in childbirth delivery can be maintained by substituting a midwife for an obstetrician, and I think there's a parallel that could be drawn there. There are certain skills which come with the teaching profession in terms of progression, progression of ideas, progression of programming, that are only available to those people who have undergone rigorous teacher training in this province.

Mr Patten: Thank you very much for the presentation. Teachers must be worried going to school these days when you consider the risks to their health.

I found the presentation on the insurance analysis to be very, very helpful to me. I suppose in a nutshell what you're saying is, "Listen, if you want to go to a purely third-party arrangement it's going to cost you," because built into the present system are incentives where in other situations, for example, people who might work in the public service, who may not feel well and stay at home, they're most likely not replaced and they most likely can pick up their work when they come back a day later, whereas the pressure builds up for teachers. My wife is a teacher. Some members think that's a conflict of interest; I don't. But I know when my wife is feeling terrible, has a terrible cold, she still goes to work; she's missed only a handful of days in six years. There is that pressure there and the sense of accountability and responsibility to the kids.

I wonder if you would have a model, or if it might be too much to ask whether you had an example of a particular school board — and it could be based on an actual school board, but let's say school board X — and said, "If this school board went ahead and replaced it with a third-party insurance plan, here is what could be the difference in terms of costs for the human resource administrators, the costs of whatever it would be." Do you have such a model? You lay it out here, some of the factors, but for me it would be helpful to say, "Look, here's an example," and I think it would be useful for us to have at this particular time.

Mr McGlynn: There's a possibility to model if school board X was able to provide a three- to five-year record of their sick leave payouts, and at this point we have not found a board that has kept those kinds of records. When we did our analysis, we looked at the cost of running the system versus the payouts, because we did not have data on their sick leave programs. That was the basis of the commentary of the additional expenditures.

The key component, however, as opposed to managing those people who are disabled, was looking after the people who are healthy and creating a better environment there, better support than exists today through both the EAP programs and the wellness programs, in order to keep them in place. Certainly the US model says there is significant payback for investments in that area, and that's what we're recommending be focused on.

Mr Patten: Some boards do that, too, questions of stress and things like that.

The Vice-Chair: Thank you very much for your presentation. You shed some new light on some of these topics, and we appreciate that.

CENTRAL ALGOMA BOARD OF EDUCATION

The Vice-Chair: Next we have Donna Latulippe, who is a teacher with the Central Algoma Board of Education. Welcome to our hearings. You have 30 minutes for your presentation. I notice it's not too long, so there may be a number of questions.

Mrs Donna Latulippe: You'll notice I did a double copy because I'm trying to save on paper at the school.

Good morning. Bill 34, or the toolkit as it's fondly called, was announced on March 6, 1996, and has had a chance to impact on our system as I feel it. Thank you for listening to a teacher who works in a classroom every day and who feels, along with my students, the impact of the decisions, because I think we're referred to as the bottom line.

I'd like to give you a little bit of background so you'll know where I'm coming from on this. I teach for Central Algoma Board of Education, which is to the east of Sault Ste Marie. I have a split grade 7-8 group at the moment, 27 students. I teach in a portable classroom which is not attached to the main school. There are 12 grade 7 students, 15 grade 8 students in the group, and four of my students have been identified with special learning problems.

I've worked actively in my federation, FWTAO, and this year I am the chief negotiator for our elementary teachers. I have presented some workshops around the

province. I was hired by our board to work half-time as a drama consultant two years ago for one year, and this gave me a bit of a glimpse into the administrative side of things.

I've raised two of my own children in the system that I teach. My son has now finished university, and he's working for Stats Canada in Ottawa. My daughter is going to be graduating in June from Central Algoma Secondary School, our only high school in central Algoma, and hopes to attend Trent University. I want to say that I feel I work in a good system, but I do have some concerns.

I want you to know that morale is a little low right now in our schools among our staff. When the toolkit information hit the papers — and I understand the effect the media can have — with many promised changes, and then the legislation appeared, it seemed that the responsibilities were turned over locally, and I'm afraid that some of the areas do not appear to have been addressed equally.

I want you to know that classrooms are being directly affected, at least in our board. In our small board, which has six elementary schools and one high school, 23 pink slips were handed out to our elementary and secondary teachers. The impact was devastating to our young teachers, as you can imagine. I teach with a young man on our staff who asked if he could write something for me, so I'll just share it with you. I didn't include it. It says:

"As a young teacher, I see myself coming to school each day wanting to make a difference in the education of a student. I've been teaching since 1990 and was an occasional teacher for five years until finally obtaining a full-time contract this year with Central Algoma. The opportunities provided to me during my teaching career have been very rewarding. However, I am deeply saddened with the cuts in provincial grants and how it will affect not only my bleak situation and other young teachers, but especially the students who will be situated in larger classes, the students who will require extra assistance and the special-needs students who will not receive the proper resources.

"Students being taught and assisted through different learning processes and other developmental changes require the ongoing service and commitment offered by local school boards. I believe these cuts will affect Ontario negatively and as a result students will no longer receive a high standard of quality education. Seeing the look of confidence on a student's face when achieving success gives an educator great satisfaction. Please consider the future of Ontario, which includes the students of today, and do not hurt our classrooms."

At the high school, older students such as my daughter, who is an OAC student, see and understand the effect of these cuts and have talked personally with their teachers. I feel we have to have a balance between younger and experienced older teachers such as myself so we can share our experiences, we can update our knowledge with each other about the new methodologies that are out there but, more important, so we can share the energy.

I would like to encourage you to please pursue the 85 factor or some factor for earlier retirement. I've received

two pieces of information just recently. One is on the back of your handout. It was a letter from the Ontario Teachers' Federation about pension negotiations updates, and then I received in the mail from the teachers' pension plan board an article which says there is no truth to 85 factor rumours. We did have a teacher on staff who, if there had been an earlier retirement, could have retired in June. I realize that's not going to happen, but we did encourage her to get her papers in order and look at these things. We did have in our group of teachers a number of teachers who could have retired. What's confusing us in the schools is that we're not sure, really, what the status of negotiations is and we're not sure that we've really been asked for teacher input — at least, I don't feel like in northern Ontario we've been asked for teacher input. I'd encourage you to find out from the teachers how they feel. I would encourage you to continue to work with OTF. I think that's very important. I think there's been a lot of misinformation given to us and it's very confusing for the people who are actually in the building working with the children every day.

0940

As I remind you, teaching requires high energy. Today's children are very bright. They require so much to be adequately challenged. We need a careful balance in our teacher ranks to meet this mandate. Parent expectations are very high. Ministry expectations are very high. The surge of pink slips and the current lack of jobs have to be addressed. Many of my former students, who would be wonderful teachers and are fully qualified, just simply cannot get a job.

A retiring teacher's salary would allow two starting teachers, approximately, to be hired, or savings to be had for boards. There's a very high imbalance right now. I hate to say "old," but we have —

Mr Wildman: Senior.

Mrs Latulippe: Senior, right.

Mr Tony Martin (Sault Ste Marie): Mature.

Mrs Latulippe: Mature, wonderfully mature; that's it.

Mr Preston: My wife's a teacher.

Mrs Latulippe: Okay, great. So am I. We have many mature teachers in our board, very few young teachers on our staff. I know this would be a saving. In our small board alone, we had approximately 11 teachers who could retire from the elementary system with a new factor. We have three teachers retiring this year and we have several going each year for the next few years. But this would be a great saving overall. I think it would help to keep the balance that I'm talking about.

I'm concerned about my grade 8 students who are moving into our only high school in Central Algoma, because the young staff there are very active in a lot of the extracurricular activities. I understand they had 12 pink slips go out and they presently have eight teachers who will definitely not have jobs at this point. I am concerned because — I'm not playing down the academics at all, don't get me wrong here — I know what keeps some children motivated at high school. I understand the number of hours that are put in and the energy that's required and I know there are a number of young teachers at Central Algoma who keep children in school

because of what they do after hours. Their energy level is there. They're coaching and so on.

Also, we have educational assistants being pulled from our classrooms who are assigned to our special education students. In our board alone, we have 10 educational assistants who have been dismissed for the fall. I have taught children who are attention deficit. Many of my children have learning disabilities. We have two hard-of-hearing children who are wearing hearing aids in our school and we have many children who are slower learners in the classroom. If they don't get some extra help, some special consideration, it is a very difficult day for them. Every day is a difficult day. And then, the classroom teacher has to fill that gap. So I don't know if we're going to increase the school day or what we're going to do, how we're going to get that all in.

This cutback also has increased a lot of class sizes in our area. In Thessalon, where I formerly taught for 18 years, they're going to three grade 7-8 classes of 31 students each. That's 93 students, and they have 27 students who have been what they call IPRC'd with special learning abilities. In Echo Bay we have a classroom of grade 2 students and there are 28 in the grade 2. One of those students is an autistic student. Now, that's dealing with a very special kind of learning problem. That child will have an assistant. That's one of the people who will be kept. But you can't put children on hold and they certainly don't wait, so you have to somehow figure out how to juggle the day to fill the demands.

Central administration, as I understood from Bill 34, was supposed to restructure and cut back to save the classroom. Now, Bill 34 has left this up to local areas and we seem to be lost in a paper game with no definite answers about required levels of administrative staff. I have some questions:

Does a small board the size of Central Algoma require 11 positions at a board office? Can we afford this size of administration? Who is checking to see if this is being handled fairly? Does a secretarial position from April 1995, a year before Bill 34, that has not been replaced count in this cutback? Wasn't this before the Bill 34 was even thought of? If a business administrator is on a short-term disability, does this count as a cutback if no one is replacing that person?

I was just told the other night at the negotiating table that our board will not be making any cuts in administration. Those were the two cuts, and they're sorry, but they can't do with less staff.

I commend our board on keeping our JK program. They've had to change it considerably, though. We've blended our SKs and JKs together and we'll be busing them every second day to eliminate noonhour busing and to cut back on busing. In our area there is a severe lack of alternative facilities for early childhood education. The research shows you will have fewer expenses later on if you give these children the opportunity of JK and SK.

I'm not really clear what our board has done about adult education. There have been some changes there. Maybe you could find out or explain this to me. If not, this does reconfirm my concern, which is about follow-up to ensure that this bill does not affect our children.

I have a final question. I would like to know when we're going to return to Common Curriculum or whatever you're going to call it now, back to the curriculum we're working with with children. We need to refocus again back to what we're doing with the children.

I think you can see that we are being affected in our classrooms. I know it is difficult when we are working with legislation, but the bottom line is, where I am at is in the classroom every day. I must return to teach at 10 to 1 this afternoon. I very much appreciate the opportunity to come here and talk to you like this. My principal, when he asked me two weeks ago, assured me I would not be here: "Don't worry, Donna, you'll never get there." I really thank you for the opportunity.

You carry an awesome responsibility in providing for our future generation an education that we can all be proud of in the future when these children are going to take over from us; remember that. If at any time I could be of further assistance or you would like to come to our school some day and visit the real challenge, please accept this as your personal invitation into my classroom. My adolescents would love to see you. Thank you very much.

The Vice-Chair: Thank you very much for a very personalized presentation. We do have some time for questioning, almost five minutes per caucus.

Mr Skarica: Thank you very much for your presentation. I found it fascinating. You raise a question which I've asked and wondered about as well, and that is, does a small board the size of Central Algoma require 11.5 positions at the board office? You've told us that there have been a number of teachers given layoff notices, and we've heard that in these hearings, but I don't recall in three weeks of hearings that we've heard once from anyone that as a direct result of the savings, as a direct result of Bill 34, a board has reduced so many trustees, a board has gotten rid of so many administrative staff. Has Central Algoma, to your knowledge, reduced any administrative staff?

Mrs Latulippe: I asked that the other night and was told, "Yes, Karen Doyle." This is a secretarial position. I said: "I'm sorry, but Mrs Doyle left in April 1995. I'm talking about since Bill 34. What have you done?" They said, "I guess you're not going to count that." I said: "No, I'm not going to count that. It doesn't count." The next thing was, this lady is a supervisory officer — she is our business administrator — and she's presently on a short-term disability suffering from cancer. She is receiving the disability but also the pay. I said, "We can't count that position either." He said, "Then I guess we don't have any."

Mr Skarica: All right. Because I'm finding that's happening throughout Ontario. In Toronto, for example, they have 35 administrators in the board there who make over \$100,000 and six of them are not being replaced because they're retiring. I questioned same thing: "If they're retiring anyway, that's not a result of Bill 34." If they hadn't been retiring, I suspect they would still be there. That causes me some concern.

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Mr Bill Grimmer (Muskoka-Georgian Bay): I too would like to congratulate you on the objectivity of your

presentation today. I wanted to ask you about your comments on the 85 factor. I've talked to a lot of teachers myself and I've been in classrooms with them as well. Both the senior and junior teachers, and many of my constituents who aren't teachers, have the same concern about the aging of the teaching population and the apparent reductions in the number of junior teachers.

I wondered if you were aware of some of the costs involved in the teacher pension plan in the province. Are you aware of the amount the public pays and contributes towards the teachers' pensions?

Mrs Latulippe: I have a handout here.

Mr Grimmer: It's my understanding that it's upwards of \$1 billion a year.

Mrs Latulippe: It was my understanding that some of this had been invested, and invested very well, that it was also a moneymaking thing. So I have a real conflict with that. I understand what you're saying, and I don't want to put this on other people, but my understanding was that for years we've been paying into a pension plan that was invested, invested very well and handled very well, and that it is a moneymaking project. Therefore, where is the money now that's it time to retire? I understand we're a big bunch because we're the baby-boomers and we're creating a big problem here, but I thought we had invested this money very well and I thought that money was there without affecting the taxpayers.

Mr Grimmer: I wonder if you've had discussions within your organizations about whether there are ways of reworking the money that's presently there to allow for an earlier exit of the senior teachers.

Mrs Latulippe: I understand that's what the negotiations are about with the government, and the negotiations are going to continue.

Mr Preston: I have to congratulate you. In weeks and weeks of these hearings, this is one of the most balanced presentations I have seen. You don't have an axe to grind; you're just concerned about the kids.

Mrs Latulippe: Yes, I am.

Mr Preston: That is refreshing in these hearings. This could very well be a pattern for a very well-run education system. Thank you very much.

Mr Michael Gravelle (Port Arthur): Good morning and thank you very much for your presentation. It is really wonderful to actually have a teacher here speaking very much from the heart, as you obviously have, someone who really is at ground zero, who really knows what it's like in there.

The question I want to get into is in a more personal sense. You have a grade 7 and 8 group of 27 students; 12 grade 7 and 15 grade 8. How do you do it? That strikes me as a really difficult job. You clearly seem to have enthusiasm and energy and obviously a great deal of concern for it, but clearly this is a difficult job and it's very demanding in terms of your energies.

Mrs Latulippe: I try to provide for the students. I do a lot of grouping. Adolescents love to visit anyway, so I try to take advantage of that. I was just talking to the young man at the end of the table about his bouncing chair this morning. I said it reminded me of my grade 8s on Friday. I try to use their energy. The Common

Curriculum has opened that up a little bit for me. I have a fair amount of freedom with information that's been provided through — I'm very involved in committees in my board. The more I do in professional development, the more I can help what my kids need in the classroom.

The problem is that you get so strapped for time. That young teacher who wrote for me, I have him in my classroom for an hour. I have three children who are just struggling with math — it's a very big problem for them — and he works with those three children. Sometimes he stays in the room and we mix them with the other groups. They work away and he makes sure they're on track and helps them. Then sometimes he withdraws them for a unit. It depends on the needs. I pre-test them so I can figure out where they're at and then I work the unit through with them and post-test them at the end.

Mr Gravelle: Are your class sizes going to change next year?

Mrs Latulippe: Yes, it looks like they're all going to go up.

Mr Gravelle: I suppose what I'm leading into is, at what point do you yourself say — I'm sure you've got a pretty good gauge on what you can do and you've obviously got a good system. In some ways you sound very much like a model teacher, one I wish I'd had in my days too. But having said that, there's got to be a point where you say: "This can't work as well. If the numbers get to a certain point, I recognize I can't provide that quality." Is that fair to say?

Mrs Latulippe: It's always fair to say that for kids. I teach adolescents — I've always taught them — so I can't really say —

Mr Gravelle: You're really brave.

Mrs Latulippe: Well, some days. Children are very into themselves, you know — "There's only me." But there's not "only me"; there are 27 or 30. It's partly an awareness of what you have to give yourself. Now I have to say I have some very brilliant children in my room, and they help each other. Once I have that set up for them, they have to help each other. It's not going to hurt them to learn how to do that, because sometimes I'm just not available for them at the absolute moment. I try to make myself available at recess. If I'm on yard duty, they may walk with me and talk to me then. We have all our kids bused, so it's a really serious problem; after school is just not available for them. You just have to make yourself available whenever you can.

Mr Gravelle: If you had 10 more students, though, it would be more difficult to do it?

Mrs Latulippe: Yes. Ten students? You know that stress thing this man was talking about before?

Mr Gravelle: It's just so clear how much you care, and obviously you want to be able to —

Mrs Latulippe: You want to make an impact. He said something very interesting to me right before this presentation. He said to me, "I remember grade 8; it was a memorable year." It is a very memorable year. Children have memorable years because of their relationships with their teachers. The bottom line is that they spend as much time with me awake as they do with their parents. So I have to be.

Mr Patten: Thank you, Donna Latulippe. I'm past president of the Canadian Tulip Festival. We should give you an honorary membership.

I was going to use the same words Peter used, and that was that I thought your presentation was balanced and that the questions you raise are in the interest of the whole organization.

You identified 23 pink slips that have been handed out to teachers. How many teachers do you have in your board?

Mrs Latulippe: We have 90 in the elementary, and I'm not sure how many there are in the secondary system. I believe there is a gentleman coming from our secondary system this afternoon to talk to you.

Mr Patten: A couple of hundred?

Mrs Latulippe: I would say 50 or 60, around that. We have only one high school.

Mr Patten: Now, these pink slips —

Mrs Latulippe: As far as I know right now, there are eight teachers still not being hired back at the secondary, and as of the other night we have 84.5 who are going to be hired.

Mr Patten: I agree that there would be — I would hope there would be — some incentives for some "senior" teachers, some of whom are eligible now, to actually take the step, because it's worth it. But there has been some debate on the cost to the boards and the immediate payoffs and when those savings would be made. I understand there's some talk about anything between 90 and 85. There may be an 87 factor or something of that nature.

Mrs Latulippe: I think anything would help alleviate the situation you're running into.

Mr Patten: But I think you're right: You need to have a balance on your staff of senior and new teachers.

Mrs Latulippe: It's very important for the kids.

Mr Wildman: Thank you, Donna. We very much appreciate the fact that we were able to get you on the list and ensure that you were able to make a presentation. You yourself are a very experienced teacher and have the reputation of being an energetic person who works hard for her students in a very good system, a very small system but a good system. It was really useful.

I agree with Mr Preston and Mr Patten in their remarks, although I must say I am disturbed. The reason I'm disturbed is particularly the note you read from your young colleague who said — and I wrote it down as you read it — that these changes will hurt Ontario and students will no longer receive a high standard of education. That's the basic bottom line of Bill 34.

What happens to your colleague? Will he be in your classroom an hour every day next year helping students?

Mrs Latulippe: He doesn't have a job next year.

Mr Wildman: Will there be anybody there helping remedial students who need help with mathematics?

Mrs Latulippe: I don't know how much help we're going to have because right now they still have not nailed down the staffing. We're at the end of May, but we still haven't nailed down the staffing. There was just a transfer, but they were still working out some changes in schools.

Mr Wildman: We've had some discussion about the balance of newer and senior teachers and the whole issue of the 85 factor. I noticed on the reverse side of your presentation the memo from OTF in which it says that there were meetings in February, March and April but the government had cancelled meetings also in February, March, April and there would be no further meetings until mediation began. Have you had any information from OOSTF as to the reasons why the government has not participated in these meetings?

Mrs Latulippe: This article I just received from the teachers' board, which just says spring 1996, says they're going into mediation. It says that under the terms of the partnership, the OTF and the Ontario government can negotiate changes to pension benefits every three years, and when no agreement was reached by May 1, 1996, a process of mediation and arbitration began. Any changes to the plan will likely be effective not until January 1, 1997. That would be the next time they would be able to have something out.

Mr Wildman: The problem is then, if that were the case, even if there is an agreement, that may not be a viable way for boards that are faced with \$1 billion less in transfer payments from the provincial government this year.

Mrs Latulippe: We really needed it this June to alleviate the problem for the next year.

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Mr Wildman: You mentioned education assistants being dismissed, 10 education assistants in your board. I've had contact from some of the parents of these special-needs children who've really expressed serious concerns, one in particular who has a child with a number of disabilities who has made significant progress over the last couple of years. This parent attributes that particularly to the education assistant who has been working with their daughter.

Mrs Latulippe: I think it's the relationship that's developed between the assistant and the child, yes.

Mr Wildman: As a result of these dismissals, this particular education assistant will not lose her position but she's bumping, she's being transferred, so she'll no longer be working with this child. The parents don't know whether she will have an assistant now, and if she is going to have an assistant, they don't know who it might be. They are now considering removing her from the system and keeping her at home and helping her themselves, and the mother is going to quit her job because of this.

Mrs Latulippe: Those are some of the ripple effects that we're feeling. Parents are upset about these things as well.

Mr Wildman: Yet the government continually says that classroom education is not being affected, or shouldn't be affected.

Mrs Latulippe: I know it is being affected. The question I want to leave you with is, who's going to check on this? Please check on it, because there is some checking that has to be done.

Mr Wildman: They've mentioned 28 students in a grade 2 classroom, and class size is going to increase?

Mrs Latulippe: No, this is the new projection for the fall, but one of those kids is autistic, remember.

Mr Wildman: Up to now what has it been, about 25?

Mrs Latulippe: For a while the sizes were only 20 and 21 — there was a bylaw — but it's steadily increasing now. It was a new initiative brought out that classrooms in primary be kept to 20 students, I believe it was, because of the fact that you're trying to teach children how to read and all the concerns.

Mr Wildman: For pedagogical reasons.

Mrs Latulippe: That has been waived now, so the numbers are just going to keep increasing.

Mr Wildman: Again it hasn't affected the classroom, right?

Mr Preston: When did it start increasing?

Mrs Latulippe: Actually it started last year that some of the sizes went up, and now it's larger again.

The Vice-Chair: Thank you very much for a very interesting presentation. I think we all enjoyed it and it really came from the heart.

CAROLYN MORROW

The Vice-Chair: Now we have Carolyn Morrow with us. Welcome to our hearings.

Ms Carolyn Morrow: Mr Chairman, members of the committee, my submission to this committee regards the future of junior kindergarten in the province of Ontario. My perspective is not from the standpoint of an educator or as a member of a professional association. It is as a parent who has observed at first hand the difference junior kindergarten makes to the development of a child. It is also as a taxpayer who is concerned that the governments of the day make the most judicious use of my tax dollars, not just in economic terms but with equal consideration given to the social costs and benefits.

As of May 3, 1996, 31 public school boards in this province had voted to maintain their junior kindergarten program as opposed to 20 that chose not to introduce it or to disperse with programs already in place. While junior kindergarten can benefit children living in all the school board districts in this province, many of my comments to you will be within the context of the West Parry Sound district, which will be providing the program in the upcoming school year. This is the school board district in which I live and the one with which I am most familiar. Like all board districts across this province, it has its own special needs arising from its local demographic composition, geography and economy. However, using this district as an example illustrates the practical relevance of junior kindergarten to Ontario society as a whole.

In April 1988, the West Parry Sound Board of Education approved the establishment of junior kindergarten, based on its own research which resulted in the following set of rationale:

Nursery schools or other private preschool programs are accessible only to those who can afford them and can physically access them.

The social pattern of life is changing in that children now have fewer opportunities to experience meaningful social and physical growth in the accompaniment of adults.

It would provide the growing number of children at risk entering our education system with socialization and language skills.

It would provide recognition, early intervention and remediation of health, physical and learning problems.

The board also acknowledged that it is largely impossible for any home environment, no matter how willing or nurturing the parents are, to meet the full potential of social interaction, varied materials and access to highly skilled professionals.

These and other supporting arguments for preschool programs have been addressed by a number of professional and government studies. Of all the North American studies undertaken by education professionals on the benefits of preschool programs, the Perry Preschool Project was the first and perhaps the most definitive. This committee has already heard a submission in Toronto detailing this particular study; however, I will briefly recap the highlights.

When compared with the control group of children who were not enrolled in the program, the study subjects showed marked positive differences in the areas of education, employment and social responsibility: higher numbers completed high school; higher numbers attended post-secondary educational institutions; smaller numbers were enrolled in special ed or compensatory programs; higher numbers were employed at the age of 19 and were self-supported by their employment earnings; fewer received public financial assistance; and fewer became offenders of the law.

Interestingly, while the preschool group surpassed the control group in intellectual performance between the ages of four to seven, this advantage levelled out beyond a child's seventh year. This finding supports the theory that early childhood education equips children to become better students not through sustained improvements in intelligence but through more enduring and life-determining attitudinal changes. The results of the Perry Preschool Project are supported by other longitudinal studies have found similar results.

In addition to these studies, Canadian federal and provincial governments have published reports on the merits of early childhood education and on the necessity of their implementation. In 1985, the Ontario Ministry of Education established the Early Primary Education Project. Citing the findings of the Perry Preschool Project, it determined that education in these years is not only a legitimate learning experience in its own right but is critically important to the children's success both in and out of school and should begin no later than the age of four.

At the time, Dr Weikart, the author of the Perry Preschool Project report, was asked if the report's findings would be replicated in Ontario. His response was definitive: "The findings have been tested in wealthier areas similar to Ontario in social makeup and there is no doubt that the same results would be obtained in a similar study here." In fact, the findings have already been replicated by the University of Western Ontario Preschool Project under Dr Mary Wright.

In 1989, the Ontario Ministry of Community and Social Services published *Better Beginnings: Better*

Futures, which again corroborated earlier findings, particularly in the area of early detection and intervention of developmental problems.

Most recently, *For the Love of Learning*, a report of the Royal Commission on Learning, was released in 1994. It found that early childhood education removes barriers to learning at the earliest possible stage, which gives children a stronger start at basic literacy and numeracy. It predisposes children to a more positive view of schooling and formal learning. An earlier start means greater and more equal school readiness for children entering grade 1 at age six.

The experience of primary school teachers in Alberta confirms this. Research conducted by the Alberta Teachers' Association indicates that teachers are observing the effects of the introduction of user fees for the preschool program in some districts of Alberta and complete cancellation of the program in others. Members of the association state that students who did not have the opportunity to be enrolled in the program are not as well equipped or prepared to meet the challenges of grade 1 as were the students who had the benefit of junior kindergarten in prior years. They show distinct delays in social, emotional and academic skills.

Who benefits most from junior kindergarten programs? In Ontario, junior kindergarten was originally established to provide compensatory education for children at risk. Typically, these children fall into one or more of the following groups: they are economically disadvantaged; immigrant children; inner-city residents; have developmental problems; come from homes where both parents work; or they come from high-stress-level home environments, dysfunctional families, single-parent homes or homes where the child is denied adult nurturing or is a victim of emotional, verbal or physical abuse. Junior kindergarten also benefits children who come from good home environments, children who for any number of reasons do not have the benefit of group interaction with other children and children who do not have access to the variety of materials and learning tools available in a preschool setting.

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The experience of our daughter attests to this. We live in a rural setting and as a result my children experience some measure of isolation. Her year in junior kindergarten last year provided Kaitlyn with an early opportunity to learn what it is to be a member of a community. She broadened her circle of friends. Not normally a joiner and often reserved and retiring, her self-confidence grew as a result of her participation in group activities independent of me. It introduced different authority figures into her life. She embarked on an unpressured course designed to give her a strong start in basic literacy. Perhaps most important, she had a pleasant introduction to education in a formal setting. For Kaitlyn, junior kindergarten was a real learning experience, not simply glorified day care, as some would assert. Similar experiences have been recounted to me by other parents in our board district.

Obviously, then, the primary reasons to maintain the junior kindergarten program are the socialization and education of young children. However, there are fiscal benefits that accrue directly to the community. By the

time the last participants of the Perry Preschool Project reached the age of 19 in 1984, the cost-benefit ratio of the preschool program was one to seven: For every \$1 invested in the program, \$7 were returned to the community.

On the cost-cutting side, decreased social expenditures resulted from the following, and I list them in descending order of fiscal savings: reduced welfare and other social assistance payments; reduced special education costs; reduced crime costs to victims and the criminal justice system.

On the revenue side, income to the community came from taxes paid on employment income. This income is cumulative as lifetime earnings rise. In short, public early childhood education programs such as junior kindergarten serve taxpayers' self-interest by reducing the consumption costs of other social services, and benefit the community as a whole.

Let's evaluate the importance of junior kindergarten within the context of the West Parry Sound district. There is some statistical information that can help us draw a general social and economic profile of our district.

The three-month moving average unemployment rate for the economic region of Parry Sound for the months of February, March and April of this year was 12%, a full 3% higher than the seasonally adjusted rate for Ontario in April of 9%. These rates have risen from December 1995 unemployment figures of 10.5% for the Parry Sound district and 8.5% for Ontario.

A conversation with Peter Cowans at the Parry Sound children's aid revealed that the referral rate of child abuse cases has nearly doubled since 1986. During this conversation, he confirmed that school at all levels does constitute an early warning system.

More generally, no one can deny that unemployment poses financial difficulties and emotional stress for all households. A large number of children attending school in this district live in rural areas and are therefore subject to some degree of isolation from peers and services. There is a significant native population, many of whom are economically disadvantaged. Reported cases of child abuse are rising. In 1995, the National Council on Welfare reported that the number of children living in poverty in this province is growing steadily. To be concise, many children in our district can be readily identified as being at risk because they come from one or more of the groups I mentioned earlier.

A report published by Statistics Canada in 1993 entitled *Leaving School* provides some relevant information about school dropout rates. Since significant numbers of students in the West Parry Sound district come from the groups identified in the report, we can apply the following statistics from the report to our district in a general way: 69% of dropouts or leavers come from high-risk backgrounds; 40% of aboriginal students are leavers; leavers are more often unemployed and have a greater dependency on unemployment insurance, social assistance and family allowance; their low basic skill levels restrict job opportunities, resulting in a cumulative disadvantage regarding employment, income and life opportunities; they are more likely to abuse alcohol and other substances; in rural areas such as ours, 42% of children

leaving school early do so before the completion of grade 10.

Remember that these children are less likely to contribute economically to their communities and are more likely to require financial assistance and other local social services. Remember that the Weikart study findings showed that 67% of children who attended the Perry preschool program completed high school, as opposed to 49% of those who were not enrolled. Remember that for every \$1 spent on a student enrolled in the Perry Preschool Project, \$7 were eventually returned to the community. That ratio may be slightly different in our district, but there can be no doubt that savings would accrue to the community as a whole for the same reasons.

Children from the identified high-risk groups are those for whom the benefits of a universally accessible junior kindergarten program are undeniable and essential. It levels the playing field for a good start in life for these children and helps to break the cycle of poverty that many of them will fall victim to and for which we will all eventually pay. It is not the only strategy, but it is one of the best. Nineteen years may seem like a long time to realize many of the benefits of offering junior kindergarten today, but they are worth waiting for and they are certainly worth paying for. To invest in such a program for our children now is to invest in the short- and long-term social and economic health of our communities and our local and provincial economies.

Who should pay for junior kindergarten? Education in today's society is interministerial in nature. There is a potential for educated students and the educational institutions themselves to provide benefits to every social and economic sector, but it is just this pervasiveness that clouds the issue of funding responsibility for junior kindergarten.

Since its inception in the western world, public education has always served a social function and has always attempted to meet the demands of the society in which it operates. Since that time, curriculum has been constantly evolving because the need that public education fulfils is not static and because the more we learn about human nature and physiological development, the more we realize that the capacity of our minds to learn and to apply knowledge makes education a necessary lifelong process from the earliest age.

If funding for junior kindergarten will not be provided by the Ministry of Education, then by whom? Who can offer an early childhood education program on a large enough scale that it can accommodate all the age-eligible children in this province? Who can offer it at no cost to parents so that it is universally accessible? Private agencies and preschools are not going to operate a not-for-profit program.

That there are many responsibilities associated with becoming a parent is undeniable, so why should it be the community that pays to provide an early education for our children? Unfortunately, it is all too easy to take the moral high ground and assert that the education of children before they traditionally enter the school system for kindergarten at the age of five is the responsibility of parents and guardians. My response to this is that the proponents of this perspective are not accepting the full

responsibility that comes with being members of their own community.

Why do we educate? Simply put, "We educate people so they can be publicly useful and privately happy." Those are not my words; those were stated by Dr J.G. Althouse, chief director of the Department of Education for the province of Ontario, 1944 to 1956, and they were reproduced in the Ontario Ministry of Education Report of the Commission on the Financing of Elementary and Secondary Education in Ontario in 1985.

Publicly useful citizens contribute to their communities and their societies in meaningful ways, both socially and economically. If studies and practical experience have shown us that preschool programs contribute to the development of publicly useful citizens, shouldn't we be expected to accept the financial responsibility of providing such programs? No one can articulate this responsibility better than Jean-Jacques Rousseau: "Government ought not to abandon its duty to educate children since the country sooner or later perceives the benefits of educated citizens....To form citizens is not the work of a day; and in order to have men it is necessary to educate them when they are children."

Our society is atomistic; that is, it is the sum of all its parts, not just those members who pay taxes, those who are gainfully employed or those who have reached the age of majority. If we are the society, then it is only to our benefit to do everything we can in an effort to produce members who are able to contribute to our community in meaningful ways. To this end, junior kindergarten should be part of an overall social and economic strategy.

The overwhelming message of employers in today's economy is that the education that potential employees possess is important; often, the more, the better. And what about the future? According to University of Toronto economist and demographer David Foot, the current decline in the birth rate will mean fewer students entering the public school system in the primary grades in the coming years. Extrapolate from this the labour market situation 15 or 20 years hence. Declining birth rates mean a smaller workforce, and if there will be fewer to choose from in terms of potential employees, it is reasonable to assume that service and industry will want them to be highly qualified in educational and social terms. If junior kindergarten has a positive impact on children in these respects, doesn't it make good socioeconomic sense to invest in the program now?

1020

It is my recommendation to this committee that junior kindergarten be reinstated as a compulsory program in Ontario in order to avoid a patchwork of academic excellence across the province with regard to preschool education. If the present government cannot see the wisdom of legislating it back into existence, my alternative recommendation is to restore full funding. In so doing, the Ministry of Education will at least be providing some guidance to those boards that chose not to offer or to continue the program and will make it easier to implement voluntarily.

The amount and quality of research and information supporting the legitimacy of early childhood education is

overwhelming. If our arrogance leads us to question the methodology and results of particular studies because they were undertaken in the United States, England and Europe rather than in Canada, that is one thing. However, our own experts can refute this criticism: experts such as Dr Mary Wright, chair of the department of psychology at the University of Western Ontario, now retired, and author of the University of Western Ontario Preschool Project, which I cited earlier; experts such as Dr Paul Steinhauer, professor of psychology at the University of Toronto, and Dr Fraser Mustard, head of the Canadian Institute of Advanced Research in Toronto, neither of whom believe that the results of all these studies are nationally, ethnically or economically exclusive.

Every child in this world develops in a physiologically similar way, barring certain congenital abnormalities. Every child has the same basic needs. Can't we then deductively reason that the early development of cognitive and social skills through age-appropriate education and that fostering an early appreciation for learning and formal education can only encourage them all to develop as members of their society who have the potential to contribute in meaningful ways? Even in times of fiscal difficulties, junior kindergarten is an investment opportunity this province simply cannot afford to pass up.

Mr Patten: Ms Morrow, excellent; a very thoughtful and well-argued case that not only identifies the pedagogical value and the human value but takes on the economic side. In other words, you're really saying while it may appear to be a short-term saving, in the long term we will be paying in other ways and we'll be paying a heck of a lot more.

Ms Morrow: Most definitely.

Mr Patten: This proposal therefore flies in the face of — and I try to say this in a non-partisan manner. Really this bill is more of a money bill because it's looking for money. It targeted junior kindergarten and, interestingly enough, some of the people at the other end who maybe didn't have the advantages of a program like junior kindergarten. Both of those programs have been targeted for X amount of dollars, and the assumption behind the amount of that \$400 million from junior kindergarten and adult education is based on some boards not providing junior kindergarten. That immediately raises the question you've raised, the commitment to universality, number one. As to the assumption that boards would drop it, we've heard testimony from various boards who've said: "We weren't really committed when it was made mandatory and we had it. Now we see the benefits of this particular program and we want to keep it, but we can't afford it." It's an economic issue for the boards.

Dr Steinhauer was before our committee and shared his findings from his studies. My only suggestion to you and anyone else who cares about this is to follow through the recommendations, because I contend that this bill is not a educational issue. It's going to hurt junior kindergarten and it's going to hurt classrooms and it will hurt education, but it's a money bill.

I suspect my colleagues on the other side are caught. Because it's a money bill and they're hearing all this testimony that is so powerful, overwhelmingly powerful

in terms of the importance and the value of this program, it places them in a very awkward position, because it really is an economic question they must address for Ernie Eves and his demands for the budget.

The Vice-Chair: Any comments at all, ma'am?

Ms Morrow: No, just that he corroborates what I've said and I think I corroborate what he says too. It's mutual.

Mr Martin: This is an excellent presentation. As a matter of fact, it covers the territory so well that it's difficult to get into any specific questions. You've done a very thorough job of supporting the reasoning behind why this province has been moving more and more into trying to make sure that each area of the province is providing junior kindergarten as an opportunity for children. My questions would be more for the folks across the table here if that were the format we were into, so I'll be interested in hearing their comments and in hearing their questions.

My read of what's going on here is that this is a continuation of an attack by this government on children, on poor children particularly, and on people who are vulnerable out there. We have to put it in the context of everything else that's going on. I just can't get out of my head that day in July 1995 when this government, in its wisdom, decided to take 21.6% out of the pockets of the poorest families who, for the most part, support children, who are trying to get their feet under them and get on with their lives.

I'm wondering if any study has been done. I know you spoke in your presentation about the levelling effect of junior kindergarten. It brings kids into an environment where they're equal with all the others in terms of the resources there and the opportunity for learning. But you have to be concerned about the equity even before they get to school. What impact do you think a decision as dramatic as taking almost a quarter of the take-home pay from the poorest of our families has on their ability to come to school and participate and learn and take advantage in the way you suggest kids who participate in junior kindergarten have the potential to do?

Ms Morrow: I can only draw from my own personal experience as an observer. Last year, when my child was in junior kindergarten, I often attended the classes. I actually work as a parent volunteer at that school. There was a high proportion of students in her class last year who, I would say — whether you want to term them economically disadvantaged or not, I don't know — came from homes that did not have an income equal to the one my daughter came from. We're a single-income family. Also, my husband works in the area for a utility company, so he is in and out of a lot of the homes in the area.

My opinion is that if these children do not have access to junior kindergarten because their parents have had their incomes diminished — people on social assistance, for instance — these parents are not going to be able to afford the apparatus or the materials to teach their children at home. Any single parent who was staying at home with a child is now going to be forced to go out and find a job, so the children will either end up at babysitters down the road or some other alternative, and these people are not always interested or qualified in

teaching children. People who don't come traditionally from households where education was valued don't really pass on the value of education to children either.

I do think that by the time these children enter the school system in kindergarten and particularly in grade 1, they will definitely show the disadvantages of not having exposure to appropriate materials or people who were interested even in reading to these kids, and certainly these kids are not going to have access to public library programs. If you can't afford to put food on the table in your house, you're not going to be able to afford transporting your child all over the place to other free programs in the district. It definitely will hurt.

Mrs Julia Munro (Durham-York): I have a quick question, but first of all a comment on the thoroughness of your presentation. On page 6, when you refer to the notion that there is a societal expectation here of responsibility, "My response to this is that proponents of this perspective are not accepting the full responsibility," I just wonder at what age you would suggest that there is that public responsibility.

1030

Ms Morrow: I think traditionally it has been for kindergarten and grade 1. Mandatory attendance in schools begins at grade 1, not necessarily in kindergarten, but for the last — I don't know, as long as I can remember, kindergarten was a funded program in this province and was required to be provided by the boards. Traditionally I think the responsibility of society begins there, and has begun there, but I think the changing nature of our society maybe should make us review that position.

Mr Wildman: The royal commission said age three.

Ms Morrow: Is it three or four?

Mrs Munro: That's why I asked the question. Are you suggesting it should go to include junior kindergarten?

Ms Morrow: Yes. I know the Perry Preschool Project suggested three. I wasn't aware. I thought the royal commission said four, but —

Mrs Munro: No, it said three.

Mr Preston: We've tried during our whole thing to keep political posturing out of this, but I think you can see the difference between this side and the other side. We consider them emergency funds and Mr Martin calls it take-home pay. That's really the basis of the problem we have right now in trying to save funds.

There is no question about the value of early childhood education, so I'm going to ask my question in a different way. My wife's a special-ed teacher. My daughter-in-law is an early childhood educator. My eldest daughter is just about to finish her doctorate in child care work. If the level is maintained —

Ms Morrow: We heard this earlier.

Mr Preston: Yes, you heard it earlier, and I've been asking the question three or four times a day in all these meetings.

What about alternatives sites and differentiated staffing? Pigs can't fly, I understand that; give me that. What about alternative sites and differentiated staffing?

Ms Morrow: I'm not sure what you mean by alternative sites. By differentiated staffing —

Mr Preston: Community centres.

Ms Morrow: Okay, I'll address that. By alternative staffing, I assume you mean early childhood educators as opposed to certified teachers. Is that correct?

Mr Preston: That's about the size of it.

Ms Morrow: My own experience has been of Kaity in school last year. I think that within an actual public school setting it is more appropriate to have junior kindergarten there. They had grade 7 and 8 students come in to assist the teacher getting kids dressed, undressed, helping with activities that one teacher in a group of 21 or 22 students simply could not manage by herself. Kaity at that point was exposed to older students who were accepting responsibility in the area of assisting and child care. For those students it's important also to be able to accept some of that responsibility. It's not just something that benefits junior kindergarten students; it also benefits students further up the scale, older students.

Mr Preston: Okay. Let's say that there's room permitting and four-year-olds are on the site, the schools. What about differentiated staffing?

Ms Morrow: This is an area that I really can't tell you. I do not know the difference between a person with an early childhood education certificate and a person who is a certified teacher. I do not know what additional or superior qualifications a certified teacher possesses over that someone with ECE.

Certainly, if the quality could be maintained, I logically don't see a problem with replacing certified teachers with early childhood education professionals; that is if the quality can be maintained. You must take my comments within context. This is an area I have not researched and I am not familiar with.

The Vice-Chair: You finally got your answer.

Mr Preston: No. I always get an answer from one particular sector.

Mr Skarica: We're running out of time. I'm new to politics and Mr Martin made a comment about "an attack on children." I find him to be a very nice person, but I really hate that kind of nonsense because none of us here has any interest in attacking children. The budget —

Mr Martin: Give their families back the money they need to feed them at home.

Mr Skarica: The budget contains, and he knows it —

Mr Wildman: Food on the table; that's what counts.

The Vice-Chair: Wait a minute now. He's got the floor.

Ms Morrow: And I can't hear.

Mr Skarica: This is what I'm talking about. The budget contains \$225 million for programs. I don't have time to go through them all, but one of them is to feed children. In my prior career I saw kids who had no chance. You could have JK, you could have whatever you want; I saw kids who weren't getting fed and who were going to school. I saw pregnant mothers who were so strung out on coke they did not know their name. We have provided money for those programs and you have to agree with me that's necessary and it's —

Mr Martin: You can't feed them at home, so you feed them at school.

Mr Skarica: That's necessary and those are good programs. "An attack on children" is just nonsense.

That's all I want to say. If you want to comment, that's fine.

Ms Morrow: I don't really see it as an attack on children; I just see it as economic expediency, that's all.

The Vice-Chair: Thank you very much, Mrs Morrow, for your very excellent presentation.

ONTARIO ENGLISH CATHOLIC
TEACHERS' ASSOCIATION,
SAULT STE MARIE UNIT

The Vice-Chair: Next we have the Ontario English Catholic Teachers' Association, the Sault Ste Marie unit: Art Callegari, president; Carolyn Stevens, executive assistant; and Jim Smith, the second vice-president. I believe there's a video involved in this presentation. Welcome to our hearing.

Mr Art Callegari: Thank you very much for having us come to this meeting this morning. It's our pleasure to be here. I'd like to introduce my colleagues: Carolyn from provincial staff, Jim Smith from provincial executive and Bernice Glew, our principal who helped us gather the information together for this video.

I'd like to thank the committee for the opportunity to present our thoughts, our concerns, our hopes regarding Bill 34. There are several components to Bill 34, and we have concerns regarding all of them, but we have chosen to address only one of them in our presentation today, and that is junior kindergarten.

We do not have a brief, as we have chosen to show you a video to illustrate our concerns. We will leave three videos for you, one for each of the political parties. We will make some opening comments, show you the short video and then answer any questions you might have.

One of the major points we wish to make is regarding the tremendous educational value of JK. It is not a babysitting service but an essential component of the education continuum, and should be funded as such. A love of learning starts in JK. Children are provided with carefully structured activities, experiences and opportunities to develop a host of skills, attitudes and concepts which will serve them for the rest of their lives.

Currently JK allows children from varied socioeconomic backgrounds to come together every day and learn together as well as from each other. If funding is discontinued, only the children of parents who can pay for JK will have this wonderful opportunity.

It is also critical that qualified teachers be in JK classrooms. As trained professionals, they are able to program for JK students in their most formative years, as they are aware of the educational continuum to 12 OAC. They are also trained to observe children carefully and are able to quickly spot those students who may require either enrichment or support in order to fulfil the benefit from contributions to education.

This careful observation and attention to findings is preventive in nature and results in thousands of dollars in savings down the road. Special education programs are very expensive — expensive emotionally as well as financially — to boards. The observations, the tracking, the interventions started in JK serve the students in the

system well. Day care or babysitting services do not provide this valuable educational service.

1040

Many of the other types of learning which take place in JK will be seen in this video. This video shows an actual day, really part of an afternoon. It gives examples of the development of literacy and numeracy, spiritual growth, social skills and the fine motor skills that are required. It also shows strategies and activities used to develop spatial awareness, sequencing, left to right progression in reading, and responsibility and organization.

You will see examples of the teacher meeting the needs of the range of abilities and the varying levels in her classroom. An example of this is that all of the students have name cards with both their first and last names on them. Some students recognize only their first name, some both names, and some even know what letter their name starts with. This is a goal, to have all the students automatically know both their names and be able to read them and recognize them.

This is teaching. This is education. This is JK, and it's not babysitting. I'd like you to spend time now watching this video.

Video presentation.

1050

Ms Carolyn Stevens: I hope that the viewing of the video helped to answer one of the questions that was asked by Mr Preston a little bit earlier, and that would be, is an early childhood educator the same as a teacher? In essence, that was his question. Can they offer the same quality program?

One of the things I tried to show here, or the teacher tried to show, was the actual tracking, because that's the educational process. To a casual observer, that may look like a day care situation or a nursery care situation, but it's not. The difference is very much the planning of the activities and planning them along the continuum of growth for education.

Another thing that's really important that's done at the junior kindergarten level with a great deal of care is the whole issue of tracking progress. Students have a folder which begins as soon as they enter the school system, and that folder follows them all the way through schools. Some of the things you might find in the folder at the junior kindergarten level would be samples of the students' art, which the teacher would examine and the parents, the students too for that matter, as they progress through the year to see the changes.

Another thing that happens is that this particular teacher, Mary, has taken examples which just look like a little scribbled picture, but what this teacher is doing is looking at the fine motor skills of this student and then has commented on them in the page that's attached. This is the kind of material that would go in the folder as well.

In the video there was a reference to the snuggle-up bag and this is the bag that each child has. They all have their own style or whatever. It contains a book and it also contains a chart, a tracking form that goes home to the parents. On the form it indicates: "I listened to a story. I read the story. We read the story together." That involves

parents as well, so that's the home-school communication.

I won't talk any more. We have copies of the video for you, one for each party in case you choose to use it for research later. At the end of the presentation we have two of the stars of the movie who'd like to make a little presentation to the Vice-Chair.

Mr Martin: Thank you very much. I felt what you had to present supplemented the previous presentation around the question of the importance of junior kindergarten and the role it plays in the development of children. We'll make those arguments and hopefully the government will understand and at the end of the day make some changes that will reflect an understanding and a compassion and a support for children in the province.

But we can't do it without looking at the fuller context, and the fuller context for me is this attack on children and particularly poorer children. What we see here is a government that is making decisions based on a promise to give a tax break to those who actually can access that tax break by having a job and substantial finances, who probably will be the least affected by the demise of junior kindergarten because they can provide personally and individually for some of the stimulation that we all know is necessary for young children if they're going to grow up to be contributing adults.

I wanted to ask you, given that we've now taken almost a quarter of the resources, we'll call it, of the poorer families in our communities away from them, which affects their ability to actually feed their kids, now schools are going to be asked to do that through this new program that has been put in place. It's my premise that it's better to have families feed their kids at home as opposed to sending their kids to school to be fed.

If you put that together with the increasing size of classes, the fact that junior and kindergarten classes are now going to be mixed in areas where that's seen as a way to save at least some facet of that opportunity, are you as teachers hearing from teachers around what is now presenting at the classroom door in the morning, as kids have less at home by way of resource to prepare them to come to school and how that impacts on the increasing size in class and all of that?

Ms Stevens: There's no question that the kids we're seeing in schools today — I've been 31 years a teacher, 26 of those in the classroom, so I'm not speaking from the provincial level as a politician, excuse me, or as staff even, I'm talking from my practical experience. We used to get kids coming to school who were well-fed and happy and well-dressed, generally speaking.

The anxiety level that we see in kids coming to school now is the biggest issue of all. They're coming to school tired, some of them are coming to school hungry and they're coming to school without some of the things that they really need and it's because of the stresses in the homes. We have a very different family structure now. The poverty level's increasing; there's no question about that. We have a lot of immigrant children who are coming in. Those families are struggling, sometimes both parents working to make ends meet, so there's no supervision at home. There's no question that we're getting kids who are very needy.

The other thing that's happening is that we're getting kids who have very specified needs. If we can identify those needs at the earliest possible level and start remediating, without it being an intrusive kind of thing, as part of the everyday program (1) those children stand a much better chance of getting over the difficulties they have, and (2) it helps the teacher because once we get into special education programming, we're talking about isolation of children to some degree — even if it's within the classroom; I was a special-ed teacher and I know that — and we're also talking about very high costs. So it's interesting that we would cut out JK in a cost-saving kind of manner and then later on pour it into the whole issue of special education.

I also find it interesting that we'll cut out JK, or we'll cut the funding which will result in the cutting of JK, which is educational — you know the research; I know you know the research — but we'll use that money to feed kids at school. School is not necessarily the best place to feed kids; it's a place to educate kids. Now I agree we have to look after hungry children, but I think that the primary thing is education. These kids are our future. I just think it's critical that we address the needs as soon as we can.

Mr Bruce Smith (Middlesex): Thank you for your presentation. I have to say that, as a member of this committee who's sat on the committee for about three weeks, one of the frustrating parts of the process is I think, over the duration of this past three-week period, we've heard from two adult learners, a handful of parents and a great number of teacher affiliates. I just want to thank you for bringing the classroom to us and to the committee through your video because we certainly haven't heard from students, and that's an unfortunate part of the committee system and the process we have to deal with.

I know you were in attendance for the previous presentation. I thought one of the interesting comments that Ms Morrow made was that in Ontario junior kindergarten was originally established to provide compensatory education for children at risk, some of the very children you identified in response to Mr Martin's question. I don't mean to be provocative with my question, but have we by extending junior kindergarten to other groups beyond those disadvantaged children compromised the very client group it was intended to focus on?

Mr Jim Smith: I don't think we have. I think one of the things one has to realize is that we continually focus upon undernourishment in a physical sense. There's a great deal of undernourishment of young children in an intellectual and an academic sense, and that's not a slight upon the parents themselves but rather a reflection or a comment upon the frenetic nature of their daily lives. In many cases it's attempting to hold down two jobs, for whatever reasons, perhaps to make the mortgage payment, perhaps for other reasons.

As parents come back to the home and the children — if you have young children, as I'm certain many people do; I certainly do — they demand a great deal of a parent. They demand a great deal in terms of play, they demand a great deal in terms of intellectual stimulation, things as basic as sitting down and reading

a book with a child. Unfortunately that's not happening in a great many of our homes nowadays.

1100

As a consequence, even children you would necessarily think of as being middle class, in the truest senses of that word, enter the system in JK with certain academic disadvantages. A universal JK program provides a level playing field. I think we have this tendency always to think of disadvantaged individuals in a physical or financial sense. We're seeing more and more, given the stresses of daily life and the instability on the part of a lot of our children at a very young age and at an older age, which are reflections of that lack of intellectual, spiritual and academic nourishment not being provided by the home. As a society, I think a school system has a responsibility to take up where the parents have left off.

Mr Skarica: I note from the figures I have here that the Sault Ste Marie District Roman Catholic Separate School Board is not one of the boards that are cutting JK, and that you got an undue burden grant to assist you with the funding reductions, which total approximately \$650,000.

We heard from a teacher in the Algoma board who told us there have been no administrative cuts in their board but that there have been cuts that have affected the classroom. Ms Morrow, who gave a very powerful presentation, is here and I asked her the same question — they have 14 trustees, which are more trustees than I have in a much larger board — and to her knowledge, no administrative cuts. What about your board? We're talking of reductions that are in the 2% to 3% range. Have there been administrative cuts? It seems to me that if there was the will to have those kinds of cuts, they could happen. Is it happening in your board?

Mr Callegari: No, it hasn't been.

Mr Patten: Thank you for bringing the video. I see you brought a couple of children as well, which is good to see.

I would like to continue on the theme of my friend across the way, Mr Preston, who continues to ask the question of differentiated staffing. I ask you, if you would, to elaborate a little more on what distinguishes an early childhood educator versus a junior kindergarten-certified teacher. I have some feel for this, but if you could elaborate on that, it would be appreciated. By the way, some boards have chosen, in order to maintain the program — some boards, for example, that had eight junior kindergarten teachers are now looking at four and four, so they were able to reduce the costs but keep the program. They think that can somehow maintain quality.

I'm glad you have this video. I'm going to take one and give it to the editor of the Ottawa Sun, who had an editorial on JK as babysitting and that this was purely an excuse for parents to get rid of their kids and while away their time. I will make a point of sharing that. I don't know whether the Toronto Sun shares the same view, but they might. I would suggest that you offer to the minister's office your background and experience, and the same for Ms Morrow and anyone else. The minister apparently could do a review. We haven't seen any activity or movement on that yet from his office, nor from the

ministry, but presumably there will be some activity in sharing your views.

Could you elaborate a little more on the distinction between the early childhood educator and the certified teacher?

Ms Stevens: Basically, the difference is not in the level of intelligence, it's not in the level of skill and it's not in the level of anything that can be measured other than in the teaching milieu. A teacher is a teacher, and that's what teaching is about. It's about having the skills that are necessary to impart knowledge to another person. Those are very specific skills. They're very related to the curriculum. It's a whole package. It's a process. It's not something you can learn, incidentally, because today when we get classrooms full of children, we've all agreed already that the kinds of kids coming to us now are not the kinds of children that were in schools 35 or 40 years ago. The curriculum is not the same as it was 35 or 40 years ago. Any teacher alone in a classroom with all those children, as you saw, has to have the ability to work with students who need enrichment. They may be ahead of the others. If you stifle them, it's as great a loss as not providing remediation for those children who need it.

You have to look at teachers having the skills to work with learning disabilities. That's a very specialized area. It takes several weeks — it's a three-part former ministry course — to deal with these kinds of kids. It's a three-part ministry course to deal with slow-learning kids, and we have those in the classroom too for whatever reasons. We have students with an attention deficit. Mr Preston was telling me his experience in that area.

Those are all skills that don't just happen. They're not just latent and can be provoked the minute you have a child who has that set of needs.

It is really the ability to impart knowledge, skills, attitudes and beliefs in a meaningful way that will help children grow. It's also a tremendous amount of skill in the area of evaluation, because if you don't evaluate what you're doing, you might as well not do it. That's why the JK program is so important; it's part of the educational continuum. Does that help?

If we could make you a brief presentation, we have our two actors.

The Vice-Chair: We always make time for presentations, even if the other members don't like it.

A skit was performed.

The Vice-Chair: I don't know if we're going to get this into Hansard, but thank you very much.

ASSOCIATION DES ENSEIGNANTES ET DES ENSEIGNANTS FRANCO-ONTARIENS

The Vice-Chair: Next we have l'Association des enseignantes et des enseignants franco-ontariens. With us are Rufin Dugas and Robert Millaire. Welcome, gentlemen.

M. Rufin Dugas : Bonjour. L'Association des enseignantes et des enseignants franco-ontariens, AEFO, apprécie le temps mis à sa disposition par le comité permanent des affaires sociales de l'Assemblée législative de l'Ontario. L'AEFO représente les 5000 enseignantes

et enseignants qui oeuvrent dans les écoles de langue française dans la province. L'AEFO est une filiale de la Fédération des enseignantes et des enseignants de l'Ontario, la FEO.

L'AEFO fait sa présentation sur deux sujets du projet de loi 34 qui auront des effets néfastes auprès de la population francophone. Nous traiterons donc exclusivement de la question de la maternelle et de celle de l'éducation des adultes.

Maternelle: Notre problème majeur n'est pas avec la partie du projet de loi qui rend facultative la prestation du programme de maternelle. En effet, 99 % de nos écoles avaient des maternelles avant qu'elles ne soient obligatoires.

Notre préoccupation tient au fait que des réductions de subventions rendent leur maintien précaire, non seulement à cause de la réduction qui affecte tous les conseils, mais aussi parce que les conseils scolaires de langue française sont particulièrement pauvres au niveau de pouvoir de taxation locale. Devant de telles contraintes financières, les maternelles sont ciblées et deviennent très vulnérables.

Les gouvernements antérieurs avaient reconnu l'importance de l'éducation de la petite enfance. La ministre de l'Éducation en 1983, docteur Bette Stephenson, avait mis en place «the early primary education project». Les recherches effectuées par le bureau de la ministre signalaient de façon conclusive l'importance de l'éducation chez les tout-petits afin de mieux les préparer aux futurs défis de la vie.

1110

En 1985, le Report of the Early Primary Education Project signalait que les parents étaient très préoccupés par l'importance de l'éducation des tout-petits par rapport à la disparité de ces services dans différentes communautés. Ainsi, le rapport demandait aux conseils scolaires d'intégrer graduellement, sur une période de cinq ans, le programme de la maternelle. Le financement et les critères de mise en place relevaient du «Ministry of Education capital grant plans».

En 1987, George Radwanski recommandait dans son rapport au ministère de l'Éducation que tous les conseils de l'Ontario soient tenus de fournir des services d'éducation de la petite enfance accessibles à tous dans les écoles publiques et séparées pour les enfants dès l'âge de trois ans.

En 1989, le discours du trône, sous le gouvernement libéral, annonçait l'obligation d'offrir le jardin pour des demi-journées pour septembre 1992 et des demi-journées de maternelle pour septembre 1994. Le ministère offrait des fonds capitaux pour assurer la mise en oeuvre de ces programmes.

En 1995, le gouvernement conservateur, dans un mouvement de volte-face, a indiqué qu'il avait l'intention de rendre le programme de la maternelle optionnel pour les conseils scolaires. Le projet de loi 34 risque de mettre le dernier clou au cercueil.

Les statistiques du MEFO démontrent que dans les écoles de langue française, sur une période de 10 ans, le nombre d'élèves à la maternelle a augmenté de 5864 en 1984 à 6907 en 1994. Dans cette même période, le total d'écoles francophones et anglophones offrant la maternelle et le jardin est passé de 1690 à 2785.

Les chances de succès des jeunes francophones diminueront avec la réduction du financement et l'abolition éventuelle des maternelles. Déjà, les résultats aux tests provinciaux démontrent que les jeunes francophones ont une bonne côte à remonter. Les mathématiques et les cours de langue vont en souffrir puisque les recherches nous démontrent l'importance de maîtriser ces disciplines à un très bas âge.

Les recherches : La Commission royale sur l'éducation, dans son rapport au gouvernement de l'Ontario en décembre 1994, faisait référence à de multiples données justifiant la mise en place et le maintien des programmes pour la petite enfance. Voici certaines de ces conclusions :

(1) Nous savons désormais que les enfants font l'acquisition de notions de mathématiques dès les premières années de leur vie et que, à l'âge de trois ans, la capacité de compter et de calculer varie énormément. Aussi, le niveau de préparation de ces enfants pour la première année est-il très divers, et les écoles doivent faire des efforts inouïs pour combler ces écarts, qui ont plutôt tendance à s'élargir qu'à s'amenuiser durant l'élémentaire.

(2) Nous savons déjà qu'il existe dès la première année de si grandes différences dans l'expression orale, le vocabulaire et l'entendement, qu'il est difficile pour les enseignantes et les enseignants de resserrer l'écart entre des enfants prêts à apprendre dans un cadre institutionnel et d'autres qui le sont moins. Il ressort clairement que dès l'âge de quatre ans et même auparavant, l'échec d'un grand nombre de nos enfants à acquérir suffisamment de connaissances et de compréhension aura des conséquences graves sur leur éducation.

(3) À Toronto, une étude sur la maternelle à temps plein montre des gains dans l'expression orale, l'attention et l'interaction enfant-enfant et enfant-enseignante ou -enseignant. Lors du suivi réalisé quatre ans plus tard, on a trouvé que les enfants du programme à temps plein avaient un taux d'échec moindre en quatrième année que le groupe témoin.

(4) À Ottawa-Carleton, une recherche menée dans le contexte de l'éducation en français dans un cadre minoritaire a étudié les répercussions de la maternelle à temps plein sur le développement d'aspects particuliers des compétences en français : préparation à la lecture, vocabulaire oral, utilisation du langage. Après un an, tous les enfants des programmes à temps plein démontraient des gains bien supérieurs dans le développement du langage que les enfants de profil comparable ne participant pas au programme.

(5) En Ontario, l'un des groupes qui bénéficieraient le plus de l'éducation préscolaire est celui des Franco-Ontariens et, dans une certaine mesure, celui des enfants francophones ethnoculturels. Les évaluations semblent montrer que les élèves francophones obtiennent souvent des résultats inférieurs à ceux de leurs camarades anglophones en mathématiques, en sciences, en lecture et écriture et en communication. Ce n'est certainement pas en éliminant une année d'école que nous allons apporter des correctifs à cette situation.

(6) L'exemple le plus souvent cité dans la recherche en éducation est l'étude américaine intitulée Perry preschool study, dont la composante longitudinale est exceptionnelle : un suivi sur 24 années. Des enfants qui à l'âge de

trois ans ont participé en petits groupes à un programme préscolaire bien conçu, fondé sur un programme d'études axé sur les habiletés à penser et à apprendre et comprenant des repas et des soins de santé ainsi que des initiatives spéciales pour rejoindre les parents, furent suivis jusqu'à l'âge de 27 ans. Or, les enfants du programme ont terminé leurs études secondaires à raison de 71 %, comparativement à 54 % des enfants du groupe témoin.

Vingt-quatre ans plus tard, le groupe à l'étude affichait des revenus plus élevés, moins d'enfants illégitimes, moins d'arrestations et plus de propriétaires de maisons. Cette étude est souvent citée car le suivi à long terme montre qu'il y a beaucoup à gagner sur le plan financier et social lorsqu'on offre une bonne éducation aux tout-petits.

(7) Dans certains pays, l'éducation publique à temps plein commence dès l'âge de trois ans pour tous les enfants, puisque la culture souscrit à l'idée que tous les enfants de cet âge ou presque ont des avantages à tirer de l'expérience d'apprendre en groupe. Dans ces systèmes, l'éducation de la petite enfance est axée sur les objectifs de l'équité et de l'excellence. Elle est considérée comme un bon départ pour tous et comme une façon d'accroître les chances d'apprendre plus tard en partant de fondements solides.

En effet, 99 % des enfants de trois à cinq ans en France sont inscrits en maternelle gratuitement ou presque. Les Français prennent l'éducation préscolaire au sérieux. L'école maternelle n'a pas été conçue pour un programme de garderie et ne vise pas seulement les enfants vivant dans la pauvreté : c'est bien un programme universel, public et gratuit. Les enfants qui fréquentent l'école maternelle n'ont pas les difficultés connues plus tard à l'école par les autres enfants.

Constatations et recommandations : Après tant d'efforts et de temps mis à bâtir un programme pour aider nos tout-petits à faire face aux défis de la société, nous voilà en marche arrière avec le projet de loi 34.

Pour l'AEFO, il est indispensable que le MEFO maintienne l'obligation pour les conseils scolaires d'offrir l'éducation aux jeunes de la maternelle. Le ministère de l'Éducation et de la Formation doit également assurer le financement de cette éducation au même niveau que pour les autres élèves.

Le programme de la maternelle répond à un besoin pressant chez les francophones de l'Ontario qui sont un groupe à risque à cause du facteur de l'assimilation.

Le programme de la maternelle et du jardin permet aux jeunes francophones de surmonter un environnement linguistique souvent négatif et facilite la transition aux années subséquentes.

Le programme permet également aux enfants des familles les plus démunies de commencer sur le même pied que les familles mieux nanties.

L'AEFO revendique le maintien inconditionnel du programme de la maternelle accompagné du financement antérieur, puisqu'il est un élément clé de la réussite et parce qu'il expose à bas âge les jeunes à la langue et à la culture.

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Éducation des adultes : Tous les programmes pour adultes francophones sont en voie d'être fermés. Pourtant,

selon les données de la Fédération des enseignantes et des enseignants de l'Ontario, 80 000 francophones et anglophones de plus de 21 ans profitent — ou plutôt profitaient — de programmes offerts durant la journée scolaire. De toute évidence, ce programme répondait à un besoin marqué chez ces adultes.

La récente création d'écoles secondaires francophones a contribué grandement à réduire le taux d'analphabétisme chez les francophones. Cependant, un bon nombre d'adultes qui ne les avaient pas fréquentées et des jeunes en raccrochage utilisaient le programme subventionné pour se recycler sur le marché du travail.

L'abolition des subventions à ce programme coûtera autant, sinon bien davantage à la province en frais de bien-être social et autres coûts sociaux. Une population qui n'est pas suffisamment éduquée coûte cher et ne rapporte pas de dividendes au trésor provincial.

Les données recueillies tout récemment par le CCF, le comité consultatif francophone de COFAM et OTAB, démontraient un très haut pourcentage de francophones qui sont sous-scolarisés. Par les statistiques que vous voyez là, il est bien évident qu'il y a un rapport, très souvent, entre la scolarité et le taux de chômage puis qu'il y a souvent un rapport entre le taux de chômage de la francophonie et la scolarité.

L'école communautaire a toujours été le point de ralliement de la population francophone, surtout dans les endroits où les services en français étaient moindres. Ces coupures porteront un dur coup sur ces communautés qui ont déjà du rattrapage à faire.

Le projet de loi 34 apporte des modifications au financement de programmes des adultes et risque l'élimination de ce programme dans beaucoup de conseils et de sections de langue française.

L'abolition du Conseil ontarien de la formation et d'adaptation de la main-d'œuvre, et les contraintes qu'imposera le projet de loi 34 sur l'accessibilité des adultes à l'éducation au secondaire, mettent en péril les aspirations des adultes francophones qui n'ont pas complété leur secondaire et qui doivent faire face à un marché du travail de plus en plus compétitif.

Pour l'AEFO, il est essentiel que l'éducation des adultes soit une composante importante du secondaire en Ontario. Il est donc essentiel de maintenir le financement de ce programme et aussi de faciliter l'accès des adultes au programme du jour au palier secondaire.

Des recommandations :

Pour ce qui est de la maternelle, que le ministère de l'Éducation et de la Formation maintienne obligatoirement pour les conseils scolaires d'offrir l'éducation aux jeunes de la maternelle ;

Que le ministère de l'Éducation et de la Formation assure le financement et le maintien de ce programme sans couper dans les autres programmes de l'élémentaire ou du secondaire ;

Que le ministère de l'Éducation et de la Formation analyse l'impact du programme de la maternelle chez la population francophone avant même de considérer de faire des changements.

Pour ce qui est de l'éducation des adultes, que le ministère de l'Éducation et de la Formation maintienne et facilite l'accès aux cours de jour aux adultes qui veulent se rattraper au niveau de leur éducation ;

Que le ministère de l'Éducation et de la Formation reconnaisse le rôle que jouent les écoles secondaires de langue française comme milieu de ressourcement de la communauté et que le MEFO appuie financièrement les initiatives locales.

Merci.

M. Patten : Merci pour votre présentation. C'est évident que vous, comme représentant du secteur franco-ontarien, avez des besoins spéciaux. Votre dernière recommandation, d'établir un sondage, a un impact sur le programme. Il me semble qu'il est important d'adresser un sondage, mais pas de mélanger le secteur franco-ontarien avec toute la population. Il est important de diviser un sondage selon la population, spécialement pour le secteur franco-ontarien, n'est-ce pas ? Ça vous donne un double défi, me semble-t-il, non seulement l'occasion d'augmenter les compétences avec la maternelle, par exemple. L'autre but est pour les adultes. Vous avez un très haut taux de personnes sans diplômes, donc pour vous c'est très important de maintenir ce programme-là.

En effet, savez-vous combien de conseils ont laissé tomber la maternelle ou leur programme pour adultes ?

M. Robert Millaire : Pour vous répondre combien de conseils exactement, ce qu'on nous dit présentement, c'est que c'est la tendance et qu'on va couper au niveau de la maternelle et des jardins. Si dans certains conseils on décide de les maintenir, on les maintient au détriment des autres programmes ; on coupe ailleurs, aux niveaux de l'élémentaire et secondaire. Les deux ont un effet très néfaste sur la population francophone.

Il est essentiel, d'après nous, de commencer très tôt à travailler avec les jeunes. Il faut considérer également que la population francophone de l'Ontario fait face à d'autres défis. Vous avez les personnes, qui qualifient selon l'article 23 de la Charte, qui ont droit à l'éducation en langue française si leurs parents ont été éduqués en français. Alors, on retrouve également cette clientèle dans nos salles de classe, et cette clientèle ne maîtrise pas du tout le français, mais ils ont droit à une éducation en français. Si nous n'avons pas ces programmes-là, nous sommes en train de nuire au programme régulier parce que nous devons faire des accommodements, et les jeunes qui maîtrisent la langue sont punis. Alors, c'est essentiel d'avoir cette année préparatoire pour que tout le monde commence sur le même pied dès la première année.

M. Patten : Il me semble aussi que pour les écoles francophones vous avez un problème avec l'accès, que dans quelques cas vous avez seulement une école dans une petite ville ou dans un comté. Si ce programme n'est plus là, cela veut dire que les parents ont le choix d'envoyer les élèves à un autre système, n'est-ce pas, et que dans l'avenir vous perdez des élèves ?

M. Millaire : C'est ça. Si un système plus gros avoisinant offre la maternelle, ça peut être du côté anglophone, alors la tentation est très grave d'envoyer leurs enfants à l'école anglaise. On sait très bien que les médias, les programmes de télévision et à la radio, pour la grande majorité sont en anglais. Déjà tout le milieu a une influence, un impact, alors si on les expose davantage, cela va être un degré de plus d'assimilation. On sait très bien que dans beaucoup d'endroits éloignés de l'Ontario,

il n'y a pas de communication en français au niveau des médias ; c'est en anglais. Les premières années des jeunes francophones sont extrêmement importantes pour les exposer à la culture francophone et à la langue.

Mr Wildman : Merci beaucoup pour votre présentation. As a representative of an area that has a significant francophone population, I appreciate your presentation very much. As you have indicated, not all of us live in Dubreuilville or Hearst or in that kind of milieu that makes it easy for francophones to maintain their language and culture, so there is a particular challenge facing francophone educators in an English milieu.

Having said that, and recognizing the importance of JK programs and adult education programs for the francophone population, I'd like you to comment on this. The government has basically said that the choices in meeting the budget cuts are really the boards' choices. The 16% cut in general legislative grants, averaged, by the provincial government should not necessarily lead to the cancellation or change in JK programs or adult education programs other than pushing adults to continuing education programs, which may not be available to francophones. How do you respond to: "Well, really, it's up to the boards. It's not the provincial government that's doing this; it's the boards, so your argument or your concern should be expressed to the boards"?

1130

M. Dugas : Juste pour répondre, chez nous, moi, j'enseigne à Sudbury à l'école alternative, qui est une école pour les adultes. On ferme. C'est fini à partir de cette année. Il n'y en aura plus de cours pour les adultes francophones. Le conseil a choisi de fermer à cause des coupures de subventions.

Mr Wildman : While the board made the decision, it's a result of the change in grants.

M. Millaire : Oui. C'est bien ça.

Mrs Munro : Thank you very much for joining us this morning. I just have a couple of questions related to the issue of junior kindergarten. We've certainly heard a great deal to support the idea. Could you tell us, is there a ministry curriculum for junior kindergarten?

M. Millaire : Je ne suis pas un enseignant de la maternelle. Certainement, il doit y avoir un programme développé des lignes de conduite à l'intérieur du ministère sur ce qui doit être couvert en maternelle et en jardin. Maintenant, je ne pourrais pas vous dire plus que ça, alors je ne pourrais pas clarifier ça. J'essayerais de le vérifier. Mais définitivement, au niveau du système d'éducation, lorsqu'on enseigne à un groupe d'élèves, il doit y avoir un programme cadre est c'est basé ultimement sur un encadrement ou des grandes lignes de conduite du ministère. C'est basé là-dessus.

Je ne suis pas certain — Piaget I, un document qui avait été sorti qui s'adressait, je crois, à la prématernelle et aux jardins est possiblement le document, mais je ne suis pas assez familier, alors je ne pourrais pas vous assurer que c'est vraiment le document de référence auquel on fait allusion lorsqu'on prépare des programmes.

Mrs Munro : The other question I had is somewhat related, only at the other end of the spectrum, in terms of adult education. Is it not true that a credit course in a

continuing education program would follow the same curriculum as an adult education program would?

Mr Millaire: I'm not sure.

Mrs Munro: My question came from the idea that if an adult student chose to go to night school to take a credit course, would it not be following the same curriculum as if it were handled in the daytime?

M. Dugas : S'il y avait des écoles du soir de disponibles, je croirais que oui, mais des écoles du soir pour les francophones, je ne sais pas si ça existe en quelque part.

M. Millaire : Beaucoup d'écoles, à cause de toutes les coupures, à la fin de la journée scolaire ne sont plus accessibles en soirée à cause des coupures au niveau de la conciergerie et toute une série d'autres choses. Alors, les coupures ont été faites là également. Est-ce qu'il y a des écoles du soir pour les adultes francophones ? Moi non plus, je n'en connais pas. Autre préoccupation également c'est — je parle en termes de francophones, puis ça s'applique à n'importe quel parent. Ces parents-là ont en commun leurs enfants qui viennent le soir également. Est-ce qu'on laisse les enfants à la maison pour aller s'instruire le soir ? On est en train de créer — déjà les familles sont assez divisées, et on les divise d'avantage. Le meilleur temps pour offrir ça, c'est pendant le jour, parce qu'il y a beaucoup de gens qui sont disponibles dans le jour à cause du peu d'emplois de disponibles.

Le Vice-Président : Merci beaucoup pour votre présentation.

Mr Patten: One question raised by Mrs Munro was: Could we find out whether the ministry has a curriculum for junior kindergarten for both the English-speaking sector and the francophone sector? I believe there is one.

Mr Skarica: I could make inquiries.

Mr Wildman: I would like to ask if our research can find out if in northern Ontario, in places like Sudbury district, Algoma district and the northwest and in Cochrane, there are any night school classes, continuing education classes in French.

ALAN ROBINSON

The Vice-Chair: Next we have Alan Robinson, who is a principal within the Central Algoma Board of Education. Thank you for joining us.

Mr Alan Robinson: Mr Vice-Chair and members of the standing committee on social development, I'd like to thank you for the opportunity to make this presentation.

The Central Algoma Board of Education is located east of Sault Ste Marie, from Echo Bay to Thessalon, which is about 50 miles east of the Sault. We're a small rural board of six elementary schools and one secondary school. There's no separate system in our board area. Almost all our students are bused from long distances and isolated areas. Our tax base is mostly farms, country homes and cottages. We have negligible industrial assessment. We are a poor, small rural board.

For our small board, some of the changes proposed in Bill 34 will impact very negatively on the people in the school system. I will attempt to outline briefly some personal concerns and concerns we share as a board.

Probably our main concern is in the area of the junior kindergarten program. Our board took the initiative way

back in 1974 to offer junior kindergarten as a pilot project and is in the book by Chris Nash, who really started the whole process of junior kindergarten in the province. We felt then, as now, that there is a great need for this type of program in our rural area. Because of a long tradition of junior kindergarten, many parents feel a sense of betrayal when they hear of cuts to the program.

There are several areas of concern over the JK cuts. We have a severe lack of alternative facilities for early childhood education. Elimination of JK would mean no alternative for most parents in our area. JK is highly valued by our schools from the view of early identification of children's needs. In most cases, we are able to have special assistance in place before pupils begin grade 1. Because almost all our special-needs children are included in our regular classrooms, this is very important to us.

It is our experience that the JK setting often initiates family interest in educational activities and provides a vehicle for early involvement of parents in the education of the child. The elimination of busing and the reduction in funding for JK will probably mean the elimination of the program rather than making it optional.

The other areas I just commented on quickly in hopes that this might be of some value to you.

Adult pupils: Over the past number of years we have worked very hard to provide opportunities and, more important, hope to many adults in our area through an adult education program. Because of being allowed to attend courses during the day, many adults are able to avail themselves of the regular buses and a full range of secondary programs. In my own elementary school we have several adults who have completed their secondary diploma and are now pursuing new careers. In our isolated area, with no viable alternatives, adult students will lose the equality of access they presently enjoy.

Sick leave entitlements: As a teacher, and now I'm speaking very personally, this leaves me very puzzled and in some sense hurt. The only question I can come up with is, is the government just looking at a way to take a punitive measure against teachers? I don't understand.

Cooperative agreements: This certainly seems to be a move in the right direction and we applaud the government for this initiative. We're currently working with other boards in a five-board cooperative on the North Shore, especially in the area of curriculum and other areas. Once again, because of our rural nature, we only have certain limited opportunities.

1140

I hope equalization payments mean small boards would benefit from increased revenue from such an arrangement and thereby improve the chances of opportunity for our students.

Some quick recommendations for you:

Continue to make junior kindergarten available to rural areas without a reduction in funding, or please offer some other program in its place.

Allow adequate funding for adult education to be offered in rural areas during the regular school day.

Please negotiate the whole thing of sick leave.

Continue to encourage cooperation between boards and other institutions. In particular, I feel there's a lot of

room for cooperation among the Roman Catholic and public boards. Just a personal comment on this. We take a great deal of pride in the fact that we are truly a public board, because I have the privilege of having in my school Roman Catholic students and any other religion as well, and I feel it's a very valuable contribution to a public system to have other faiths in the school, especially the Roman Catholic.

Pursue equalization of funding.

This isn't a long presentation. I avoided making a lot of comments and referring to documents and figures because it was my intent to present myself as a principal of a local school with some gut reactions to what I feel is happening in the bill. Thank you very much.

The Vice-Chair: Thank you very much. You've left a lot of time for questioning. I'm going to ask one, and I normally don't, but following up on what Mrs Munro said earlier, do you have an answer to that question? Is the adult education program basically the same as continuing education or vice versa?

Mr Robinson: I don't know.

The Vice-Chair: You don't have a continuing ed program within your board?

Mr Robinson: Yes, but my area is elementary. I really don't know a lot about that. I'm sorry.

Mr Gravelle: Good morning, Mr Robinson. Thank you very much for coming here. As you know, we had one of the teachers from your board here this morning.

Mr Robinson: Yes. She's a friend of mine.

Mr Gravelle: She was wonderful and she gave a terrific presentation which was very balanced and —

Mr Robinson: Her area of expertise is dramatic arts.

Mr Gravelle: Is she still here? She was terrific.

Mr Robinson: She's a great lady.

Mr Gravelle: You bring forward in your short but clear presentation some important points. One of the key ones is in terms of JK. In our public meetings, we've been to Windsor and Ottawa, and as to Thunder Bay, probably some of this applies in terms of the district, the smaller communities, but they didn't make representation, so I think it's important to explain it in terms of the alternatives to junior kindergarten. I presume you are also very much a believer in the value of early childhood education.

Mr Robinson: Yes, I am.

Mr Gravelle: In other words, if the situation continues, you're talking about a full loss of early childhood education in most ways in your board area.

Mr Robinson: It would be a net loss to us because we do have to bus; so much of our program depends on busing. Next year we're moving to a full-day, combined JK-SK every-other-day program, which is a brand-new venture for us. We're not sure how it's going to work. We aren't sure we can afford to run it. If we can't, we'll have to cancel JK in the following year, and that's a very real possibility.

JK is such a volatile issue with a lot of people because it seems to me it's very often based on personal experience. Very quickly, my personal experience was that when JK came along for my kids, my wife said: "No way my kids are going to JK. It's just a babysitting service. I'm not interested in it." My wife did take the kids, did

get involved, and today she is one of the main supporters of JK that I know of. She thinks it's very valuable. Other people have the same experience, or they say, "No, it's a babysitting service."

I truly believe in early childhood education. I believe as early as junior kindergarten in my school I can spot the potential problems, especially in the area of behaviour, and begin to deal with them as early as JK and on up through kindergarten and so on.

Mr Gravelle: I think that's a significant statement you are making too. We've heard about statistical information that proves the value of JK in a long-term way and even in terms of its economic benefits down the road, and we have heard anecdotal references in terms of how people can see the difference, but from your perspective, it's significant to hear you say you see the difference over the number of years you've been there. That is a case we want to make as strongly as possible.

One of the things the government finds itself saying at times about this is that they haven't really eliminated this, that it's up to the local boards, and they've watched various boards make decisions, like you have, to maintain it so therefore it's perhaps okay to have these funding reductions. For one thing, you have said you may not be able to maintain it next year, and that's even without further cuts down the road.

Mr Robinson: That's correct.

Mr Gravelle: With further cuts it's probably totally inevitable, but even without further cuts it's inevitable. I presume also that you've had to make some major adjustments to maintain it.

Mr Robinson: Certainly staffing adjustments and moving people around. We have to look at new curricula to run the program and so on. It's a very upsetting time. When I talk to my parents who come into the school —

Mr Gravelle: I was going to ask you about the level of anxiety.

Mr Robinson: It goes all the way from being very angry to very confused. They don't understand, because the things they read say that junior kindergarten is very important.

One of the things that bugs me personally — and since I get to talk, I can do a personal thing — is that to me, once again it points out the value we as a society place on the youngest members in our society. It really hurts me to see, first of all, that secondary children are given higher grants to start with. There may be reasons for that; I'm not interested in arguing that sort of thing. But to look at the youngest members in our school system and say, "We're just going to slash the funding for these people; they really don't have any value" — that's the message that gets to me. That may not be what it's supposed to be about, but that's what I feel.

Mr Gravelle: There has been discussion by various members on the government side of the concept of differentiated staffing. I'm curious about your views on that as a way of dealing with the reductions.

Mr Robinson: As a federation member, I think they certainly should have teachers in place in JK, in early childhood education. On the other hand, my personal experience is that I have met early childhood educators whom I esteem very highly, who do an excellent job. I

don't know where the answer for that lies. I have personal opinions on it, as I said, but I don't know exactly.

Mr Gravelle: In essence, they're different tasks, or a different role, different needs?

Mr Robinson: I don't know enough about the early childhood educators to really comment, in a sense, to differentiate. I know what kindergarten teachers do, and especially in the area of evaluation, I really feel they're very important.

Mr Wildman: Thanks, Alan, for coming. I very much appreciate it. My children, as you know, have all benefited from junior kindergarten in your system.

Mr Robinson: Yes. Thank you.

Mr Wildman: I've had four who have attended junior kindergarten — for one of whom that was her only contact with the education system — and I'm hoping my fifth child will have the opportunity to participate in junior kindergarten in Central Algoma.

First, I think I should clarify one thing so that everyone understands. I'm sure this is not necessary, but just in case. Even if the junior kindergarten program is mandatory for boards, it is optional for parents to decide whether to send their children to the program. That's important.

1150

Could you elaborate a little on what changes have been made in the junior kindergarten program for next year so it can be maintained in Central Algoma? You've said it's been changed to a full day, senior-junior kindergarten combined, on alternate days. This cuts your busing costs and staffing as well, I suspect. What other changes have been made that may or may not be beneficial to the students?

Mr Robinson: First of all, at present we run buses so we have a morning kindergarten class and an afternoon kindergarten class. Next year, the children will all come on the same busing system and go home on the same buses. We really are in the process now of looking at curricula, of looking at the whole program to see what we're going to do for the fall. We haven't spent a lot of time at it because we haven't had a lot of time. Most of that is going to take place over the summer, I would imagine.

Mr Wildman: On differentiated programming, I know you didn't want to comment directly, but I should put on the record that one federation, the Federation of Women Teachers' Associations of Ontario, has indicated they're not necessarily opposed to differentiated staffing as long as the program is under the supervision of certified teachers. In other words, you could bring in differentiated staffing as long as they were working under the supervision of a certified teacher.

Mr Robinson: I've heard that proposed. I certainly don't have anything against that. As a matter of fact, one of my staff members just completed her early childhood education diploma this past fall so that in the event something like that happens, she would be in a position to supervise.

Mr Wildman: Obviously this bill, Bill 34, is about money. It's about taking a lot of money out of the education system in one year, and we're looking at further cuts next year. Your board, as you've indicated,

is a small, rural, assessment-poor board, and you're interested in the equalization aspect of Bill 34. Are you aware that there is nothing in this bill that requires that the money that may come from agreements with the Metro Toronto board and the Ottawa board of education to transfer moneys to the provincial government will be used in education?

Mr Robinson: I didn't know that, but the climate of today would make me think that certainly would be true.

Mr Wildman: There isn't anything in the bill that requires that.

Mr Robinson: I would be sceptical that we would get any money.

Mr Wildman: And it is very unlikely, I suspect, that boards like yours would see their grants increased above what has been already announced, with the undue hardship assistance that's been provided, because of moneys that come from Ottawa or Toronto. That money will go into the consolidated revenue fund of the provincial government. Maybe some of it will be used to pay the \$14.5 million that has been promised to some boards like yours to alleviate the effects of the cost-cutting, but it's not going to mean a major change in what you're already facing now.

This is a particular problem and has been an ongoing problem for your board for a long time, even before the cuts of this government or the previous government. Is it possible that we would see school closures or school amalgamations in Central Algoma because of the financial situation that is compounding the assessment-poor reality of your board? Has that been discussed, do you know?

Mr Robinson: That has not been discussed in a formal way at my level of understanding. However, I think it's a little beyond me. Certainly there is rumour in the community that that is a possibility.

Mr Wildman: There have been rumours about Tarbutt school and Johnson school, for instance.

Mr Robinson: That school wasn't closed, because it's the same school. It was reconfigured so that now all the students are at Johnson school.

Mr Wildman: Thank you very much for your presentation.

Mr Skarica: As indicated by Mr Wildman, you're one of the boards that received an undue burden grant, and I think that reduced the reduction by 40%.

It was brought up earlier that your board has 11.5 administrators, and I note from your brief that you have one high school and I think six elementary schools. I didn't take JK, but my calculations are that you have more administrators than schools. Has there been any effort at all to look at those administrative costs? Do you need 11 administrators for one high school and six elementary schools? Can you get away with half of that or a third of that or two thirds of that? Has there been any initiative to look at saving costs in that area? I'm probably putting you on the spot here, because I know you're sort of in between.

Mr Robinson: Sure you are, but you meant to, so that's fine. First of all, I don't know how the figure was arrived at. I don't know what is included in that figure of administrative staff. Does that include vice-principals?

Mr Wildman: Secretaries.

Mr Robinson: Secretaries? I don't know what it includes. Have we looked at administrative cuts? Yes, we have. For instance, one cut we could do —

Mr Skarica: I'm talking at the board level.

Mr Robinson: But we're talking about such a small board that what you're talking about, as far as I understand, would be principals and vice-principals. I don't understand where you would find — well, we have a director of education, we have one superintendent, we have a manager of plant, we have a business administrator who's now on leave because she's sick and has not been replaced. Outside of that, I don't know. You would have to include principals and vice-principals. We could cut vice-principals, although with our rural nature we feel it's very important to have a vice-principal in place. It costs about \$4,000 a year each for six vice-principals.

The Vice-Chair: That's in addition to what a teacher gets paid?

Mr Robinson: That's correct; that's a vice-principal's allowance. You're asking the wrong person, but I'll give you my personal opinion. My personal opinion is that administratively — and I'm part of the administration, so it's my opinion — we run a very lean ship and we do not spend excessively on administration. I wish to goodness we could have consultants. We have one special education consultant for the whole board. I don't know if you'd call her administration or not. She receives a small extra allowance. We have a half-time computer person who does not receive an allowance. He isn't administration that I know of. No, I don't see where we could cut it.

Mr Preston: I want to thank you for being here. I missed your submission, but I did get your answer to a question I've been asking of presenters since day one, and it was an unbiased answer because you gave me two answers from two perspectives.

As a federation member you believe that early childhood education should be taken care of by teachers, but personally, early childhood educators who are qualified have been doing an excellent job, in your opinion. That's the answer I've been looking for, but I've been getting the two answers from the two different parties all along. I never get one to tell me that the other side of the equation is correct, and you have done it. Thank you very much, sir. You made my day, my week.

The Vice-Chair: Is that the only question you have?

Mr Preston: That's it. Hey, when a guy agrees with what I've been trying to do for a whole week, what else am I going to say?

Mrs Munro: Thank you for joining us this morning and giving us your insight. I've just a couple of questions that relate to the issue of junior kindergarten. As this is a rural board primarily, how long are children on a bus to go to junior kindergarten, on average?

Mr Robinson: At the present time?

Mrs Munro: Yes, under the present system.

Mr Robinson: It would vary from school to school and depend on distances, because we cover some pretty far distances. It certainly would be half an hour each end.

Mrs Munro: How long might it be?

Mr Robinson: In miles?

Mrs Munro: No, is half an hour an average? Are there children who are on a school bus, one way, longer than half an hour?

Mr Robinson: Yes, there could be.

Mrs Munro: Would they be there an hour, 40 minutes?

Mr Robinson: I'm trying to think of my experience. I taught on St Joseph Island, which is an island, and I'm trying to remember how long. In my school, half an hour would be about it. In the school I was at formerly, it could go to three quarters of an hour. Even though you may only be travelling 30 miles, you're dropping off kids and doing a circuitous route, whatever.

Mrs Munro: That's right. This would be for two and a half or three hours for junior kindergarten?

Mr Robinson: Yes, it would vary from school to school, depending on when the buses come. In my school, the junior kindergarten come in the morning and they are there at about 8:30 when they're dropped off. Our school day starts or a bell rings at 10 to 9 and they stay until about 11:20, when they get on the bus.

Mrs Munro: You mentioned, as have many of the people who have talked about the importance of junior kindergarten, early identification. How early can you do an IPRC?

Mr Robinson: We do IPRCs on children in junior kindergarten. We did two of them just recently.

Mrs Munro: The point was made earlier that junior kindergarten has always been an option for parents. Given the kind of community you serve, what percentage of parents actually do send their children to junior kindergarten?

Mr Robinson: We would come very close to 100%. To my knowledge, it's very rare to find a family, that is interested in the public school system to start with, that doesn't send their children to junior kindergarten. The only exception I know of would be home-schoolers, which I have some very strong opinions about but I won't get into.

Mrs Munro: I respect the fact that you don't want to get into your opinion on that, but could you just tell us, do you have any sense of the percentage of people involved in home-school programs?

Mr Robinson: If my understanding is correct, we have a fairly large population of home-schoolers in our board area, especially for the size of our board. The last figure I looked at, we have about close to 60 children in our small area who are home-schooled for either religious reasons or reasons of not wanting to get involved with it. You don't want my comments on that, I'm sure.

The Vice-Chair: Thank you very much, Mr Robinson. You've given us a different perspective on the situation.

We're now in recess until 1:30 this afternoon.

The committee recessed from 1203 to 1336.

SAULT STE MARIE WOMEN TEACHERS' ASSOCIATION

The Vice-Chair: The first presenter this afternoon is the Sault Ste Marie Women Teachers' Association with Gayle Manley as president. Welcome to our hearing.

Mrs Gayle Manley: Thank you very much for — it's not an invitation; I guess it is an invitation — allowing people to present. I know it must be a weary three weeks you've all been through and today is the end of it. I see you with your bags in the lobby and ready to go.

I'm Gayle Manley and I'm the president of the women teachers' association of Sault Ste Marie. I'm a teacher. I've taught for 24 years.

Mr Patten: Are you John Manley's sister?

Mrs Manley: No, nor Elizabeth Manley's cousin either, I might add.

To my right is Agostina Patterson. Agostina is an FSL teacher. She is on my association executive and also a mother of a future JK student. Also with me, who is paying the bill for our lunch, is Miss Emily Noble. She's a principal in Sault Ste Marie and also on my executive.

I've provided a brief. It's a nice bright yellow, so after a big lunch, maybe that'll help you wake up a bit.

The Sault Ste Marie Women Teachers' Association represents 320 women teachers in the public elementary system. Daily, these women see the effect of the cuts to social programs and education that the present government is exacting on the people, in particular, as we see it, the children of Ontario. A recent ad from the Ontario government in the Sault Star was titled, "Doing Better for Less." It is our opinion that many of these cost-cutting measures enacted through Bill 34 will not create a better education system but one which will be accessible for some members of our community and not for others, as in the case of adult education. The advantages of early childhood schooling through junior kindergarten will be available for some communities in Ontario but not for all four-year-olds. The actions of the provincial government to reduce education spending seem to be designed for short-term savings; unfortunately, these cuts will have serious long-term effects.

It is ironic that the premise of overspending in education which has prompted some of the measures in Bill 34 is based on an incorrect use of statistics by the Minister of Education and Training. According to the Minister of Education and Training, we are spending about 10% more per pupil than the average of the other provinces. From this comes the figure of \$1.3 billion a year in overspending. However, if one uses StatsCan figures, we are behind Quebec, Manitoba and British Columbia in per-pupil expenditures. According to StatsCan, Ontario's average expenditure is \$6,961 and that is 2.4% above the Canadian average of \$6,796. However, on considering these figures more carefully, it was found that the data used by the government included federal and private schools in Ontario. The data also entailed kindergarten expenditure but not kindergarten enrolment. This would definitely increase the cost per pupil and create a crisis in education.

It is important for the parents, children, teachers and education workers in Ontario, and specifically Sault Ste Marie, that the social development committee give serious consideration to the global issues which the changes proposed in Bill 34 will entail. Accessibility and quality education must be priorities.

Addressing junior kindergarten as an optional program: What we've done in our brief is to hit a few things that we think are important. I know some of the presenters

this morning just did junior kindergarten, so we've done a little bit on each.

Removing the mandatory requirement that school boards operate junior kindergarten combined with the cuts to school board grants means that school boards have few options but to cancel junior kindergarten programs or make significant changes that would compromise the quality of the program. Option implies choice; however, the boards of education in this province which have had to cancel junior kindergarten had no choice.

It is interesting to note that a Conservative government in 1944 led by Leslie Frost announced the first provincial plan to provide junior and senior kindergarten. Is it not ironic that the current Conservative government, using the motto "Common Sense Revolution," wants to eliminate a program that makes valuable early education equally accessible to all?

The Minister of Education and Training has indicated that a complete review will be made on the impact of junior kindergarten. Why is junior kindergarten to be made optional in Bill 34 before the results of this review are known? One might also ask, what is the government's intent in this review? To look at the costs of junior kindergarten or its program value? What are the details of this review? If Sault Ste Marie junior kindergarten classes were to be under this review in 1996-97, one would not be observing a program as it was originally intended but blended JK-SK classes designed to meet the demands of reduced grants. Would this be a fair review?

There is a vast amount of research available to show the benefits of early childhood education: a sound foundation for future academic growth, stimulating age-appropriate programming, access to school facilities, resources and support services for all children and parents, and you saw the value of a program this morning with one of the presentations. The 1985 Early Primary Education Project from the Ministry of Education acknowledges that a child's fourth year is a period of rapid growth and that junior kindergarten benefits all children, not just the disadvantaged. The Perry Preschool Project, initiated in the 1960s and concluded in the 1980s — and I've included a chart in the appendix that looks at the study — found that children who have a good early education starting at age 3 have fewer learning problems, less delinquency, more self-sufficiency, higher employability and greater productivity. For every \$1 spent on early education for young children, society saves, according to this project, \$7 later on because problems can be prevented rather than treated. The benefits definitely outweigh the costs. The Royal Commission on Learning, published in December 1994, one of the most extensive consultations about our education system, emphasized the need for early childhood education as a good start for all children, no matter what their socioeconomic background.

This is what Mrs Judy Williams, a parent in Sault Ste Marie who cares deeply about what happens to her child in school and in his future, has written about her son's experience in JK: "Junior kindergarten is a wonderful program. It teaches children to share, listen, cooperate, communicate, responsibility and to get along with others. Children of this age learn so much. I have found JK has had a positive influence on my son. He has gone from a

shy child in September to an outgoing, eager-to-learn pupil who enjoys being with his friends. I feel that Jordan has learned a great deal this year from counting, writing his name, to thinking about the world around him. He always has many questions and I enjoy listening to his tales of his new-found experiences. I feel it would be a shame to lose this program."

In Sault Ste Marie, junior kindergarten has been successful. Parents have continued to be positive and supportive. Enrolment has increased since its first years in the Sault. Because of junior kindergarten, early identification has resulted in early intervention for children with difficulties observed in the areas of speech and language.

After many hours of budget deliberations, the Sault Ste Marie Board of Education has chosen to continue junior kindergarten because it believes in the value of this program for the parents and the children of our community. Unfortunately, to retain junior kindergarten a price had to be paid. We will be blending JK and SK classes, making classes with three-, four- and five-year-olds together. There will be a higher pupil-teacher ratio and no teaching assistants. How could it be said that cost-cutting measures have not affected the classrooms of Ontario? We urge you to reinstate the mandatory nature of junior kindergarten as an investment in Ontario's future and our children.

We all recognize the value of education and we know that learning is a lifelong, continuous process. Many adults are increasing their knowledge and skills through various courses; many are returning to school to obtain a secondary school diploma, often working and supporting a family at the same time. If courses are only available through continuing education and at a cost, then access and opportunity will be greatly limited for many people, creating a two-tiered system of education: one for those who have the ability to pay and one for those who do not.

It will be a challenge for single parents — mainly women — to balance the responsibilities of parenting and wage earner plus upgrading their skills. The current adult education programs give flexibility of timetabling and courses. Under the government's proposal in Bill 34 to direct adult pupils to continuing education credit courses, there will be no option for many adults but to drop out of school again. In the aforementioned ad in the Sault Star, the Ontario government stated that:

"Doing better for less in government is a key part of our plan to reduce costs, balance our budget, improve the investment climate in Ontario, create jobs and" — last but, in my opinion, not least — "to restore hope and opportunity."

Will this plan for adult education restore hope and opportunity, let alone lead to a better-paying job, for many of these adult learners? We think not.

Bill 34 removes reference in the Education Act to the number of sick days to which teachers are entitled, effective September 1, 1998. Removing this reference will put a great number of local collective agreements across the province at risk. If it is the current government's intention to place boards of education and teachers' groups into adversarial positions, this will be achieved. Approving this amendment will have two major

effects: (1) weaken the collective bargaining process and (2) leave teachers in a position where they do not have the same provisions that many other groups of workers have. Is this fair to our students, that their teachers who would have no right to sick days would have to teach in a less than optimum condition to provide learning?

Basically, removing the sick leave clause in the Education Act will not save any money for boards of education. However, a secondary issue, that of retirement gratuity — or what most other professions call severance or departure packages — is what is the true target of the bill's amendment. These sick leave benefits have been negotiated in good faith with boards of education. A deal is a deal, but it appears that the provincial government is using this legislation to cancel out deals which have been negotiated in the past.

The purpose of cooperation between agencies and boards of education should be to better serve the students and the community, not just to achieve savings. It is to the credit of our board of education in the Sault that it has been proactive in the area of cooperative measures as they work out a joint transportation policy with the separate school board of education.

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We work together with a number of agencies responsible for children in the area. Our northern schools are also part of a cooperative initiative with the ministries of education and training, health, community and social services and northern development and mines for the provision of assessment and treatment services called Integrated Services for Northern Children. We believe in the importance of sharing services in the north, where distances are great and funds are often low in some areas. The spirit of this particular amendment to the Education Act is commendable and confirms many partnerships already in place. It is critical, however, that the reason for cooperation not be just "to do better with less," but rather to integrate to better meet the needs of our children.

When the Minister of Education and Training tabled this bill on March 28 of this year, he said, "Our government is committed to developing an education system that is based on excellence in student achievement as well as accountability to, and affordability for, all Ontario taxpayers." What the minister omitted from his straight A report was another A: accessibility. Both amendments regarding junior kindergarten and adult education deny accessibility to education for all learners. Universal education is an ideal championed by all civilized nations. As teachers, we want to ensure that all our children have equal access to a quality education and the opportunity to achieve their full potential. We urge the government to consider this a priority as well.

Moreover, these cuts to education funding have severely affected the classrooms in our province. These are cuts based on tales of overspending when we are in reality behind Quebec, Manitoba and British Columbia in our per-student expenditures, according to StatsCan figures.

In his speech on March 28, the Honourable Mr Snobelen also said that "while it is urgent to address these matters, we must allow time to ensure we maintain quality programming for our students." If they are to

allow time to maintain quality programming, why is it the government intends to make JK optional before its impact has been reviewed? Why is the government so ready to extract \$1.3 billion in such a short time frame? Why is it we in the education community hear so little from the ministry about curriculum initiatives for the past year? The business ethic seems to dictate what is done in education these days, not the real reason for us all being here, the children.

What follows are three recommendations, as you can see: (1) that junior kindergarten be restored to being a mandatory program and, with that, appropriately funded as a category 1 grant; (2) that adult students have access to both continuing education and regular day school programs for credit courses; and (3) that Bill 34 be amended by deleting the sections relating to sick leave for teachers. We hope you consider these suggestions. Thank you.

Mr Wildman: Thank you for your presentation. I'd like to look at page 9, where you say at the bottom, "It is critical, however, that the reason for cooperation not be 'to do better with less,' but rather to integrate to better meet the needs of our children." I think that's really central to the whole issue before us, whether we have a child-centred education system or whether we simply look at it as a way of saving money.

Where you say "doing better with less," quoting the government ad, wouldn't it be better to just be honest about it and say that what is being expected, if you're going to take \$1.3 billion out of the system, is that we will do less?

Mrs Manley: I don't think it's totally hidden. To most people, they can see what is evident, so I would agree with you, but then I did vote NDP — excuse me.

Mr Wildman: Actually, I understand your remark, but I don't think this is a political issue in that sense. We all have to look at how we're going to serve the students better.

Mrs Manley: Many people get accused of being special-interest groups. That's an obvious thing for teachers, that we are interested in children and quality education.

Mr Wildman: In terms of the review of JK, you raise a very good point: Why would we make it optional and cut the funding and then say after that we're going to do a review? It's sort of putting the cart before the horse. In terms of the review, has FWTAO been contacted by the ministry about this review, and have there been any requests for input from your federation into this review that the ministry says it's going to do?

Mrs Manley: I gather that they have met, and that's when we were informed about the review. But since that meeting, I don't think there has been. FWTAO has offered to give input to the review and help in that matter.

Mr Wildman: But your concern is that if they do the review now, you're going to be reviewing a program that has significantly changed from the original program and that is not going to be able to serve students as adequately as it has in the past.

Mrs Manley: In Sault Ste Marie, you wouldn't be reviewing a JK program.

Mr Wildman: You'd be reviewing a blended SK and JK program, yes. Are the class sizes increased in this program?

Mrs Manley: Yes.

Mr Wildman: Do you have the numbers?

Mrs Manley: They haven't stated, the board of education, in doing their figures. Emily, as a principal, you might be able to address that.

Miss Emily Noble: Certainly in terms of if we had a straight JK, an example would be at our school the enrolment for the senior kindergarten as of September 1996 will be approximately 30 students; we have enrolled in our JK approximately 12. What we have to do is blend those two. So you've got six in one class with 15 SKs, which is about 21 or 22. We currently, in the one class, have 19. We're looking at an increase of at least three to four students per class across the system if the stats that I have from the board are correct.

Mr Wildman: Are you losing education assistants for special ed?

Miss Noble: We will be losing our teaching assistant and educational assistants for kindergarten. In special education, they're downsizing significantly. There may be some, depending on the need, yes.

Mr Preston: We've heard a lot of presenters tell us about ECE. I happen to be a believer in ECE, and I don't see how anybody else who is on this committee can not believe in it. But detection of physical problems and learning disabilities starts at almost six months, with lack of recognition, lack of eye contact, motor skills. At what point should a municipal, regional, provincial or federal government, at what point should a government, start funding early childhood education?

Mrs Manley: As teachers, we respect the ECE program. We've always talked about the importance of working with ECE workers. Within the formal education system, certainly that could be possible at JK, at age three or four. I don't know what intention — your government's already taken money away from some of the day cares, which would be ECE workers as well.

Interjection: I thought we increased it.

Mr Wildman: You took it away, and then you put some more back in.

Mr Preston: We could have taken it and kept it; we didn't. Maybe my reputation precedes me, because I didn't ask you that question, but I'm glad you gave me the answer, that you are happy with ECE teachers.

Mrs Manley: ECE workers, not teachers. They're not teachers.

Mr Preston: All right, educators. How far down the road do you consider we should start funding it? At three years of age? Is that what you're saying?

Mrs Manley: You mean funding junior kindergarten?

Mr Preston: No, early childhood education. I differentiate between the two.

Mrs Manley: Yes, I understand that.

Mr Preston: Where do we start funding this very important early childhood education?

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Mrs Manley: Obviously, schooling itself begins, at the moment, in our systems at age three. There can be three- and four-year-olds going to JK, so I obviously think

that's a point where we should be funding formal schooling.

Mr Skarica: I just wanted you to listen to a couple of figures here. I have the business and general administrative expenses of the Sault Ste Marie Board of Education. For elementary it's \$111.59 per student; Sault Ste Marie, it's \$198 and \$100, so approximately, for elementary, it's \$170, and for Sault Ste Marie it's approximately \$300.

The board I'm from, the figures are this: business administration, \$54; general, \$39; Wentworth county board secondary, \$97.69, about half of what your board is spending administratively. So there's room to move in your administration. Have there been any attempts to make administrative cuts in your board, and if so, what's happened?

Mrs Manley: I'll let Emily speak to that too, but our board has been downsizing over the last few years. We had a superintendent retire and they didn't fill that position, so they have been working on it, and even in their present budget. Actually, they're doing a presentation later on, so you could definitely reserve that question.

Mr Patten: Thank you for this presentation. We've heard from some of your sister chapters as well around the province, a number of times, so it's like running into a family.

Mrs Manley: It is a family.

Mr Preston: A large family.

Mrs Manley: It is the largest one.

Mr Patten: You will be pleased to know — you may not have picked it up, but during estimates the deputy minister confirmed that the comparisons between the different provinces really were not justifiable in terms of making various comparisons with different criteria. In fact, he made a pledge that he would come back with something that did truly compare apples with apples.

But one overall statistic that we found useful was that 41% of the students in elementary and secondary in Canada come from Ontario, and Ontario has 42% of the expenditures. So if you just think in those terms, we're hardly out of whack, especially when you look at the urbanization of Ontario and its multicultural nature.

Mrs Manley: Its diversity.

Mr Patten: Its expenditures are higher than in most other provinces as well. I just thought I would mention that.

Actually, I must tell you, I feel sorry for my colleagues across the table because people are coming in here making comments related to the validity of the programs that are affected and the classrooms that are affected, and there really is no comeback on the government side in terms of challenging the validity or value of the program. The reason for that is because, in my opinion, this is a money bill. The Treasurer has asked the education minister to find X amount, or it's been offered or whatever, and that money is taken right out of the system.

The public school board association suggested: "Listen, if you wanted some money, why didn't you work with us and the bodies? Let us find the cuts. If you're looking for money out of education, let us make the cuts, because we know how our systems are affected and what will minimize truly the impact."

I think the government got themselves into a rat hole by targeting specifically to reduce the definition of the classroom, because they affected two classrooms: JK is a classroom the last time I recall, and the adult education, another very important classroom. So they shrank both ends and said, "That's your new definition of the classroom," to be compatible with their campaign pledge. But as you say, most people see through that.

On the adaptation model that you put forward, which is commendable to try to protect, to save the program for JK, I have two quick questions. One is, what is your prognosis for next year? Because when the cuts become annualized, it will be even more. And what, in terms of adult education, do you see in the future as well?

Miss Noble: In terms of the cuts to kindergarten, I think the boards are taking a serious look, and I think you're perfectly correct: The boards have some really, really tough decisions next year and the year after. The money will not be there. The government has said so. If the government has made those programs optional, then I think the boards, and certainly northern boards, being familiar with a couple, the finances are not there and they have to seriously look at the dissemination and destruction of programs.

In terms of adult education, I'm an elementary school principal and I see the parents in the school who come in with their students. These people are in adult education programs, they're hoping to get jobs, and the reality is that they will not be there. If the boards don't have the finances or the options, they just can't be there. They talk about hope in our brief, and that translates to the kids and affects, in turn, the classrooms we deal with at the elementary level.

The Vice-Chair: Thank you very much for your excellent presentation. We appreciate it.

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ONTARIO SECONDARY SCHOOL TEACHERS' FEDERATION, DISTRICT 30

The Vice-Chair: Next we have the Ontario Secondary School Teachers' Federation, District 30, Wayne Jackson, president, and Geoff Shaw, vice-president. Gentlemen, welcome to our hearing.

Mr Wayne Jackson: I'm Wayne Jackson, president, District 30, OSSTF.

Mr Geoff Shaw: I'm Geoff Shaw, president of the Sault division, OSSTF.

Mr Jackson: Thank you very much for finding a space on your agenda to hear our brief. You have a copy of our brief in front of you, I notice. It's not my intention to read through everything there, but certainly I would wish to take some of your time to flag what my members believe to be areas that warrant considered reflection.

The executive of District 30, Ontario Secondary School Teachers' Federation, welcomes the opportunity to address the social development committee. Our members have grave concerns about certain provisions of Bill 34, An Act to amend the Education Act.

District 30 is the organizational unit of the Ontario Secondary School Teachers' Federation that represents the professional and occupational interests of some 473

teachers employed by the Michipicoten, Central Algoma, and Sault Ste Marie boards of education. The membership of the district is divided into three divisions: Central Algoma division, Michipicoten division and Sault Ste Marie division.

At the outset, let us communicate to you the fact that our members are very bitter about the way in which the current government and its predecessor have treated education and education workers. Our anxieties are aggravated by actions and approaches of the current government that suggest a very serious assault on Ontario's system of public education.

Bill 34 emerges in the midst of the most determined cuts to its funding that Ontario public education has ever experienced. Over \$1 billion will be removed from elementary and secondary education over the next school year. These cutbacks follow the three years of the social contract that themselves cut our educational spending by over \$1 billion. As a result, during a period of sustained enrolment growth in the province that has the highest per capita income and cost of living and the province that welcomes the greatest number of immigrants, our per-pupil expenditure will fall below the national average. No one in this province concerned about the future of our province can be secure in the face of this reality.

Ontario's public education system from the very beginning has been the foundation of our province's social, economic and political development. Our form of democratic representative government, which stresses the participation of all citizens, relies on an educated populace. In a multi-racial society that continues to welcome immigrants, the role of education in bringing together citizens from other cultures and societies has been all the more important to our provincial wellbeing.

As Ontario grew and developed, so too did our school system. The relatively brief common education that met the needs of an agrarian society has evolved into a complex system teaching the skills necessary to survive in the post-industrial information age. Adding to the challenge was, and remains, the need to ensure equality of opportunity for all students, no matter where their location in the province, no matter what their ability level or social or economic standing. The steady improvement in the graduation rate from our elementary and secondary schools since the Second World War attests to the success of our local school system. We are the envy of many in the world in this regard.

Even more than in the past, we have to provide a level of education to all our citizens that allows them to participate to the fullest degree in the global economy. Our investment and your investment in education will be the key to employment opportunity and ultimately to our collective economic survival.

Funding our school system adequately, with an acceptable balance between the contribution of the local property taxpayer and the provincial government, is thus essential to the wellbeing of all citizens of Ontario.

Good government, constitutional liberty and economic security: The mission of Ontario education is every bit as important today as it was when Egerton Ryerson first enunciated it.

On page 3 you will find an enumeration of the items we find of particular interest. I draw your attention to adult education, school organization and reform, junior kindergarten, financing education and cooperation, and sick leave. We will address elements of each of these to one degree or another. I would ask that you review the brief following our presentation of each of these.

Mr Shaw: I'll comment on adult education, beginning on page 4. Some of this material you have seen before, I'm sure, from other OSSTF presentations, but there are some comments that are different.

Currently, resident adults are guaranteed seven years of secondary education under the Education Act, and those adults comprise about 20% of our secondary school student population. Our adult education programs are a great success story: 83% of adult students get a job or go on to further education after leaving our programs. Adult students stay in our schools, on average, less than a year, because full-service programs such as cooperative education and the recognition of past academic and work experience for equivalency credits can meeting their twin needs of getting a diploma and obtaining job skills.

The result of the funding cuts will see most small and medium-sized boards switch all adult education to their continuing education departments. That certainly applies to Sault Ste Marie. Students will continue to achieve credits and to graduate — that will certainly happen — but they will not have access to the services available to them in a high school setting, services which can make an enormous difference for young people at a crossroads. We hope the price of these cuts will not be a dramatically increased dropout rate.

These students are often trying to make real changes in their lives. That's what they went back to school for. They're young people in transition. The decisions they make at this point could well determine whether they will become productive members of society. To help them make these momentous decisions, the high schools can provide guidance, career and lifestyle counselling, job shadowing, job search programs and cooperative education programs. Very little, if any, of this is available in a night school model of delivery, yet this is what boards will be forced to do. Does this government really want to put in place a system that discourages adult learners and is loaded with disincentives for positive change? These students want to get off welfare. They want to improve their opportunities for employment. That's why they're in school. One would think that a program that helped them to do so would be applauded and encouraged, not gutted.

At the bottom of page 4 and the top of page 5, you've probably seen some of this, but I would draw your attention to the bullets at the middle of page 5, the stats. Those are provincial statistics about success of adult high school students. Locally, our statistics are within one or two percentage points of those; it's remarkable how close they are.

Until this year, Sault Ste Marie, Michipicoten and Central Algoma offered adult programs which led to a secondary school graduation diploma. Many of the students from these programs went on to post-secondary education or to the world of work. In fact, the success

rate, as I said, locally mirrors those provincially. These programs work.

The drastic cut in funding of education for students over the age of 20 is having devastating effects on the students in many boards who are losing access to local day school programs. The specific barriers to students 20 and over contained in the regulations and legislation could well be a case of discrimination on the basis of age and might well be violations of both the Human Rights Code of Ontario and the Charter of Rights and Freedoms. The only way that will be decided, of course, is by a court challenge.

While some boards such as Ottawa, Toronto and Kingston have seen the wisdom of maintaining much of their adult day school program, others have not; and the decision is often directly related to the size of the board. Small and medium-sized boards cannot make up the funding shortfalls elsewhere. The result is a two-tier system of education — people living in the large metropolitan centres will have a major advantage.

The funding cuts make it impossible for small boards to offer a day school adult program. The resource base of the large urban boards allows them to fund it on their own. Since we're here in northern Ontario where no boards are considered large boards, we're into what can only be called geographic discrimination. If you live in northern Ontario you know what I'm talking about; it doesn't happen only in education.

On page 6, we go on with other comments about what happens if the programs aren't offered. If they're not offered in the local high schools, you're going to see federal retraining funds from Human Resources Development Canada, Workers' Comp and UIC going to private providers, and they charge fees as high as \$400 for a career counselling session and \$2,500 for a battery of aptitude tests. The attack on adult education can only be called fiscally shortsighted. I think "shortsighted" shows up in our brief at least six times.

Adding to our concern is the recently announced business plan for the Ministry of Education and Training which called for the abolition of the Ontario Training and Adjustment Board. Such an action will create a training vacuum in the province that private for-profit groups will rush to fill. It would be a sad state of affairs if students or governments — local governments, provincial governments — were forced to pay exorbitant fees to these groups while public high schools with a tradition of excellence in adult programs in virtually every community are forced to turn them away. Neither students nor taxpayers benefit from such an arrangement.

The consequences of this government's action is to deny access to quality education to some of the most vulnerable members of our society. The proposed changes to the Education Act, made in the guise of offering flexibility to boards of education, will establish a two-tier secondary system in the province of Ontario. Those over 20, including single parents on family benefits, immigrants who need upgrading and anyone who did not make it the first time around, will be denied access to the day school programs which have had such resounding success rates and directed to severely underfunded con-ed pro-

grams. This is not common sense, no matter how you cut it.

The government's goal should be to allow school boards to continue to meet the needs of all residents of the community. The most enlightened approach it could take would be to keep its hands off adult education if it's not ready to enhance its effectiveness.

You see, following on page 6, four recommendations, which I leave to you to read.

Mr Jackson: If I may draw your attention, members, to our reflection on school organization and reform, it's on page 7. The force of the change to regulation 298 is to remove the requirement that school boards organize secondary schools by departments or other organizational units. Boards are no longer prevented from appointing a teacher to direct or supervise more than one organizational unit in their secondary schools. As well, boards are no longer required to appoint a teacher with specialist qualifications to direct or to supervise a department.

These amendments strike at the very heart of the quality of the education we offer in Ontario's secondary schools. The Ontario government imposed in the past such requirements on boards to ensure that schools in all areas of the province had the benefit of a structure that gave coherence and support to the subject disciplines that made up the school's program. This action ensured equality of access to education for all citizens of Ontario. An integral part of the structure was of course the department head or director whose specialist qualifications ensured there was a high level of competence in the subject areas offered within particular departments.

The foresight of previous governments has given Ontario education an excellent quality throughout the province. From one corner of the province to another, from large boards or small, rich communities or poor, Ontario's students were prepared for the world of work and for further education at college or university. There is an equity issue involved here.

Department heads and directors constitute a cadre of expert and committed school leaders who work with the principal and vice-principal to develop and administer each school's curricular and extracurricular programs. Visitors from other jurisdictions are invariably impressed with the quality and the richness of Ontario's school life and frequently remark on the collegial model of leadership that makes it possible.

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There is, however, an ominous shadow of additional far-reaching reforms to the secondary school program now beginning to emerge. The outrage of teachers over the savaging of the public school system is going to be further aggravated by yet another round of curriculum and program innovation.

If the government thinks these reforms that are about to befall can be managed without the active leadership of department heads and directors, it is sadly mistaken. Ontario schools have dealt with change in an effective manner, in a proven manner as well. During the past three decades we've seen reform follow reform in a seemingly endless procession. The key to our success in implementing these changes as well as we have has been

the existence of this expert cadre of leaders within each school, the department heads and the directors.

Preliminary drafts of the reforms suggest that the government is poised to radically transform Ontario's education system. Should the draft or a variant of the draft become policy, I fear public schools will be forced to abandon their broad-based and intellectually enriching mission in order to adopt one that is narrow, centrally controlled, skill-driven, with a single focus on our preparation for work.

Among the proposals is an increase of co-op work experience and credits for student jobs outside school. Indeed, the proportion of work experience required of students in what is called the "work pathway" as opposed to the "university-college pathway" is somewhere between a minimum of 20% and a maximum of 40% of a program over two years. Such work experience will include a whole variety — a hodgepodge, if I might say — of school placements, school-arranged experiences, student-arranged experiences, part-time paid employment, volunteer work, summer employment, community service and other contrived experiences.

There's no indication that any of these placements will be supervised and monitored by certificated teachers. Education will be oriented to job training at a time when the future appears to be one of high unemployment.

The only benefactors of such disruptive changes will be the small élite of work track graduates who are fortunate enough to find employment in the ever-shrinking and diminishing group of highly technical, interesting, secure and well-paying jobs. The mass of work track students, regrettably, appear destined to spend their adulthood underemployed in mind-numbing, insecure, underpaid jobs, mostly in the service industry, without the benefit of an understanding of the economy, politics, arts or the role of good citizenship.

The proposed curriculum in a time of rising unemployment will be about as useful to this province's graduating youth as bits of cake were to France's 18th-century poor.

Overall, the changes in credit requirements will result in a narrow, inflexible education program. The increased number of compulsory credits and the reduction in English credits will have a disastrous effect on humanities education. Students will be denied opportunity to develop a facility for critical thinking and will be prevented from exploring areas such as the arts — including music, visual arts, dramatic arts — history, geography, family studies, technical education and even business.

The fundamental concern that the OSSTF has, members, is that through these proposals the system of public education will bear the responsibility for unemployment levels in this province. At a time when they need fewer and fewer workers, business has shifted the spotlight off themselves and on to the schools as the cause of this unemployment. Yet employment or unemployment is, quite properly and most naturally, the responsibility of the government, of business and the corporate sector.

OSSTF believes that public education's focus is to educate the student for employability by means of an integrated approach that incorporates social and scientific understanding, work and citizenship. When compared to today's graduates, those students who complete the

truncated program that awaits, proposed by the minister, would be undereducated, less academically rounded, less capable of competing on the international stage and less able to participate in today's society or to exercise a role as a competent, informed, tolerant citizen. The government's shortsighted cost-saving obsession is an irresponsible gamble with the futures of the students in our elementary and secondary schools.

I turn now to junior kindergarten. I was in attendance this morning, and I am sensitive to the fact that a number of my colleagues and advocates, both in schools and outside schools, have made a very thorough treatment of this subject. I was particularly touched by one that I found especially poignant. I don't intend here to revisit ground that has been trodden over many times, no doubt, during your hearing. I would, however, draw your attention once again to a reiteration of Dr Fraser Mustard's position, Cameron Smith's analysis of it on page 10, and on page 11 the Perry Preschool Study, which has figured prominently in a number of the presentations here.

However, I would ask that you turn your attention to page 10 and indulge me with your attention for a few brief comments.

Nothing can be more basic than the way a nation cares for its children. Hillary Rodham Clinton drew on the African proverb, "It takes a village to raise a child" for the title of her recently published book, "It Takes a Village: And Other Lessons Children Teach Us." The village of the present is not the suburb or small town of memory or nostalgia but the global village: "the network of values and relationships that support and affect our lives." In response to the book on race and intelligence, *The Bell Curve*, Hillary Clinton cites the Abecedarian Project led by the University of North Carolina psychologist and educator, Craig Ramey and begun in the 1970s. I leave you with the summary of the findings there.

Skipping down to a summary statement by Mrs Clinton: "Bear this research in mind," she implores the reader, "when you listen to those who argue that our nation cannot afford to implement comprehensive early education programs for disadvantaged children and their families. If we as a village decide not to help families develop their children's brain, then at least let us admit that we are acting, not on the evidence but according to a different agenda."

Turning to page 12: We also don't intend to revisit the arguments that have been raised regarding funding education. I would draw your attention to several points here, however; the third paragraph.

There is a perception, and we find it far too often repeated, and a number of our colleagues have pointed out that there is a problem with the calculation of the expenditure. I don't intend to reiterate that here, but I would note that the perception of Ontario as the fat cat of Canadian education needs to be placed in a much broader context. When compared to our NAFTA partner, the United States, we find little fat on the Ontario cat. I quote from an article in the *Toronto Star* just two weeks ago: "[A]ccording to 1994-95 figures, Ontario ranks 29th in level of support compared to US states. All states north of North Carolina and east of the Mississippi offer greater per-pupil support than Ontario does."

Turning to page 13, you'll find some discussion of the funding issue continuing there. I would draw your attention to my conclusion.

Public education has become simply another victim of the neo-conservative agenda. Cuts to social programs and education are being made at a cost to the society which is hidden and long-term.

It's not a recession that is at the core of the revenue problem. It is not the broader public sector that is at the core of the revenue problem. It is not the welfare parent nor the marginalized that are at the core of the revenue problem. Rather, it is the implementation of an economic agenda that is shifting wealth to the corporate world where it is taxed very little, if at all, and where it does not contribute its fair share to the wellbeing and social fabric of the province of Ontario.

Drawing your attention to the recommendations, of course, but also to page 15, I turn to my colleague Mr Shaw.

1430

Mr Shaw: Our last comments are on the sick leave provision, the change in the regulations regarding sick leave. If you look at page 15, the first half of that page, I think you've seen much of that material before, the comparisons with other professions and so on. I'd like to draw your attention to the material on the bottom half of the page. There's another twist to this. In many other areas aside from those listed there, the sick leave provisions can be quite different, and they even make reference to this magic number of six that I keep hearing about. I keep hearing rumoured, "This should be the number of sick days teachers get so you're just like the rest of the corporate world." Let's do a little examination of this.

One of the major employers here in the Sault does indeed provide six days of sick leave per year; that's six days at full pay. But after that, the employer pays 75% until LTD kicks in, so it's not quite just six days. Then add to that that the employee has the option of topping up the 75% with holiday pay. This is not, however, an option open to teachers because, whether or not you realize it, teachers don't get holidays. I know, we get all this time off, but we don't get holidays in the sense of the Employment Standards Act. In fact, the act specifically excludes teachers from paid holidays, holiday pay, overtime pay and paid statutory holidays.

Teachers thus do not have the fallback support that many other groups in society have in times of serious illness. It's nice to think we've got two months off in the summer, but if we're not sick in the summer that doesn't help much. If you're sick in November, you need the time then, and we don't have the option of shifting it around. This is due simply to the historical evolution of the education system in Canada. To change the sick leave provisions to match some other practices in the province would require many other changes; otherwise there would be an undue burden imposed on one group. Teachers don't have that option of switching holidays. They don't have the option of drawing on some other bank of days to maintain an income when serious illness strikes.

To conclude, the existing system of sick leave is reasonable. It addresses effectively the real need that led

to its creation and it should be preserved in the interests of boards, of students and of their teachers. As such arrangements are common in the public and private sector, there is no possible reason to discriminate against teachers, except perhaps to go back to what Mrs Manley said, that there's another agenda at play here. Again, the recommendation is there.

What follows in the last two pages is a summary of our recommendations and I would leave you with that. The last appendix, the last page, is a little out of date now. These were the boards that had slashed adult-ed programs at that point.

Thank you very much.

Mr Skarica: Going to page 15, I've seen that chart many times; in fact your umbrella organization gave it to us as well. I'd like to refer to a presentation this morning from another teachers' group. They made an interesting observation that nursing, at the top of the list there, has two fewer sick days per year than you have, but they have an absence rate of 19.6 days per worker per year, which is more than double what yours is, yet they do with two days less, and their accumulation is 120 while yours is 200.

My simple position is, why can't the board just negotiate, with you, sick leave provisions? According to your own charts, you have substantially more than nurses, who are dealing with ill people basically year-round. Why can't that just be a matter of negotiation, depending on the board's financial position and yourselves?

Mr Shaw: Quite frankly, if it becomes a matter for negotiation, you're going to see a patchwork of practices across the province and I just don't see that as being a valuable step forward. Essentially, I think the summary of what I said was, if it ain't broke, don't fix it, and the system doesn't seem to be broke.

Mr Preston: "Broke" is a good word.

Mr Shaw: Going to some other system is not going to save you any money, and if you think it is, then you're listening to the wrong people.

Mr Preston: I find it very strange. If my wife doesn't get any holidays, she's staying away from school an awful lot, because there's a lot of time in the summertime she doesn't go to school, and Eastertime and March break. So if she doesn't get holidays, I've going to have to talk with her.

As representatives for the teachers' federation, how do you feel, if quality is maintained, about differentiated staffing in junior kindergarten?

Interjection.

Mr Jackson: Yes, that was exactly going to be my comment. You will appreciate that we are secondary school teachers and our —

Mr Preston: I'm asking you as union reps, not as teachers.

Mr Jackson: As a teacher and as a stakeholder in Ontario's education and as a representative of teachers on our affiliation —

Mr Wildman: And a parent.

Mr Jackson: And a parent — I see the two roles as being really quite different. They do different jobs and I can't imagine equating one with the other to try to

determine a sense of equality. Equal in what sense? They do different things. The pedagogical planning?

Mr Preston: All of it.

Mr Jackson: It seems to me, then, that you're going to have to have an early education worker who has a teaching certificate if they're going to do the pedagogical planning that I think most Ontario parents require of their school system.

Mr Preston: That's 30 out of 30.

Mr Patten: I appreciate your brief. It differs on a few points from some of your brother chapters.

Mr Skarica: Or sister chapters.

Mr Patten: Or sister or whatever. Because of time, I would like to ask you one thing, and that is, in many of these models that are affected — junior kindergarten, adult education, and then the leaked draft of secondary reform talking about a massive program of co-op that would take years, it seems to me, to have any true educational value — in my opinion, this is all based on an urban model. It may apply to Toronto, because you've got all of these companies and you've got a lot of services and this sort of thing, but when you try to apply this in a school board that has schools in a lot of tiny towns, in many cases, with one business or a one-company town or no companies at all, because it's agriculture or mining or whatever it may be, or forestry — in other words, the range is not there — coming from the northern part of Ontario, what's your reaction to this?

Mr Jackson: I question the efficacy and the practicality of the reforms regardless of their location. I don't think they're going to work in Toronto, they're not going to work in Hamilton and they're certainly not going to work in a Desbarats or in a Sault Ste Marie. I don't wish to leave you with the impression that we're opposed to or in any sense critical of co-op work experience. In fact, we have been leaders as an affiliate in planning cooperative work experiences for our kids. We have commissioned studies at our expense just to put those programs in place. I'm thinking of the Alan King projects and studies that are given international significance.

In terms of the type of co-op and work experience and the time that is given them in the draft document, it's going to be at the expense of other classroom activities, other school-based activities. It's not going to be under the monitoring of our co-op monitors, as we understand, the certificated teachers. They would be more appropriate, I suppose, 20 years ago when jobs were available. We're in a changing, shifting economy, and I'm not quite sure what the work experience is going to be for at that level.

1440

Mr Wildman: Thank you for your presentation. It's very comprehensive. I would like to deal with a number of things. First, on page 13 of your brief, the last paragraph, you talk about the revenue problem. I just would point out to you that as far as the government is concerned, and they've reiterated this many, many times, we don't have a revenue problem; we have an expenditure problem. That's what Bill 34 is about: cutting expenditures, taking money out of education. It's not a revenue problem as far as the government is concerned. This is a money bill; it's not an education bill. It's about taking money out of education.

If you look at page —

Mr Jackson: If I may interrupt, I am sensitive to the subtlety and in fact I don't call it a debt problem because I didn't want to give currency to what I think is a fabrication.

Mr Wildman: I take very seriously your concerns about the work-related curriculum and the leaked document, but I would like to move to adult education, page 4, where you say students will continue to achieve credits and graduate but there may be a dramatically increased dropout rate.

We had in Thunder Bay a presentation that was made by principals who indicated that in small towns where there is only one high school — and I know in Central Algoma where you represent or Michipicoten, there's only one high school — if the adult education program is ended, there are no options for people. They can't go anywhere else.

Why do you think there's going to be a greater dropout rate if they're directed to continuing ed? The minister says that, after all, these are adults, they're more mature, they don't need the kind of supports that adolescents have so they should be able to achieve without the kind of counselling and assistance that day programs make available to adults during the secondary school.

Mr Shaw: May I comment on that? These adult students are back in a high school setting because they couldn't succeed in a high school setting. For whatever reason, they didn't finish high school. Mostly they couldn't fit into the — again, there are hundreds of reasons why hundreds of people don't finish high school, but to say that they're adult now, because they're 21, and they don't need any support system is nonsense. It is complete and utter nonsense. They came back because they can find a support system that will help them make some decisions in their lives.

Not everyone comes from a nice, straight, middle-class background and has lots of family support and has lots of other support structures out there. Some people in our society need assistance, and many of these students do. Now, there are those who are back just to get a credit here and a credit there. That's fine. The system can provide for that. But there are many others who need help and the school system can provide it. What you're doing here is denying them that help, that assistance.

The Vice-Chair: We'll have to leave it that. Thank you both for your presentation.

This morning, Mr Wildman, you asked a couple of questions of legislative research. Does the ministry have a curriculum for JK in French and English?

Mr Patten: No, I asked that question.

The Vice-Chair: Oh, Mr Patten. There was also one dealing with the continuing education. The answer to that one is, not at the present. The minister is in the process of preparing a curriculum for kindergarten which will also be useful for JK. Curriculum for JK and kindergarten was previously done at the school board level. Then there is a lengthier answer with respect to continuing ed classes being offered in French in northern communities.

Mr Wildman: That was my question.

The Vice-Chair: I'll pass this on to you and you can determine whether you're satisfied with the answer and take it from there.

SAULT STE MARIE BOARD OF EDUCATION

The Vice-Chair: Next we have a presentation by the Sault Ste Marie Board of Education. We have presenting on behalf of the board Frances Sowards, chair; trustee Don Edwards; the director of education, Ray DeRosario; and Bert Campbell, the superintendent of business. Welcome to our hearing.

Mr Wildman: Mr Chair, if I could interrupt just for a moment, this came from the ministry and it doesn't even approach answering the question. I asked a very simple question: How many communities in northern Ontario provide night school in French? Give me the answer. This just keeps saying they can take classes in continuing education. That's begging the question. The question is, what continuing education programs are provided in French? How many boards provide them?

Mr Skarica: I didn't table it.

The Vice-Chair: It came from legislative research. It's a fax from Toronto, I take it.

Mr Wildman: I'm not being critical of him just giving me what the ministry provided him.

Mr Skarica: Maybe we can look into this and get back to you later on that.

The Vice-Chair: Welcome to our hearing. If you could identify yourself for the purposes of Hansard, we look forward to your presentation.

Mrs Frances Sowards: My name is Frances Sowards and I'm the chair of the Sault Ste Marie Board of Education. On my left is trustee Don Edwards; on my right is Ray DeRosario, who is our director of education; and on the extreme right Mr Bert Campbell, who is our superintendent of business.

I don't think we're going to need all that time. As you can see, our presentation is very short. We've even single-spaced it in the effort to save paper. We are being very cost conscious in our board and have been for some time. I'm the only one who gets double-spaced programs. Anyway, thank you for agreeing to see us.

The Sault Ste Marie Board of Education is in agreement with the submission already made by our trustee association, OPSBA, to the standing committee on social development, so we haven't gone through them all item by item. We're in general agreement with all the positions that our association takes. We'd like, however, to highlight some of the board's particular observations and concerns.

Our first one will be related to junior kindergarten. One of our concerns has been with the province's attitude to junior kindergarten, and we regret that provincial funding for this program was reduced before the results of the government reviews are known. Our board's JK program is an integral part of our primary program, and our primary teachers are highly trained professionals in this area. The curriculum has been developed specifically to provide our young students with the best start in school possible and to improve our primary programs from the beginning. The program provides staff with opportunities to observe and assess students and, if necessary, intervene early. This helps to avoid expensive later intervention, maintains children in the mainstream, and research clearly shows it reduces later expensive

problems for society — and it sounds to me as if you've had plenty of people telling you that today. It's our board's recommendation that the government should take no further action until its reviews of this program are completed and full consultation has occurred. In the long term, we think it's a big mistake to affect those programs.

We're very concerned about the suggested changes to adult education and the current funding changes and reductions relative to the same. Accessibility to all schools is important to students of all ages in a community such as Sault Ste Marie where all major employers, such as Algoma Steel, government ministries and many others, have been downsizing and therefore employees are forced into retraining. These adults must be able to access all schools as they upgrade their education to complete their secondary diplomas. Accessing the broad-based technology programs, for example, as well as English, math and science credits, is just as important for returning adults as for teenagers. Our composite schools tend to specialize in the various areas due to the expensive equipment and the expertise of the staff. It's our board's recommendation that all our schools should be available to students of all ages and funded at the same level.

With regard to cooperation between school boards, the Sault Ste Marie Board of Education has always supported this concept. However, in practice it can be difficult and time-consuming to achieve major savings. There are many irritants on both sides. Our board believes that cooperation between boards is necessary even if it requires legislation to accomplish it, and we agree with the amendments suggested in OPSBA's presentation. Financial incentives and making sure that potential changes in board geographical areas lead to more coterminous boards, rather than less as in the Sweeney commission's recommendations, would also encourage more cooperation and reduce costs.

With regard to extractions from negative-grant boards, the Sault Ste Marie Board of Education is adamantly opposed to the basic principle of handing over local education taxes to the provincial government. This undermining of local accountability is potentially very dangerous for the whole principle of local governance. If and as the trend to lower and lower provincial grants continues, a majority of boards in the province could therefore be in that negative-grant situation and be required to forward local taxes to Queen's Park. We absolutely agree with the statement in OPSBA's presentation that the province should negotiate with the boards presently affected. The sections requiring this handover must be deleted.

1450

In general, and taking the liberty of wandering from the particulars of Bill 34, the Sault Ste Marie Board of Education is very concerned about the severity of changes that we feel will undermine the ability of our board to prepare our children in particular for the future, when a superior education is a necessity and not a luxury.

Our board is of the opinion that there is not a lot of fat in our education system and that there is not too much spent on administration. This attitude should not apply in northern Ontario. In areas such as ours, badly hit by

economic stress and high unemployment over many years, we have been reducing costs by closing schools, reducing supervisory, classroom and support staff and minimizing repairs, maintenance and all other costs. We have absorbed continual provincial cutbacks in transfer payments and provincially mandated expenditures not generally related to education, as well as sharing more and more of our assessment base with the separate board and not being compensated, all the while keeping our taxes to a zero increase three years out of the last five.

These actions reinforce our opinion that local government and local accountability close to the people are responsible and responsive. We are very concerned at what appears to be a trend towards reducing the role and the responsibilities of local government. The recommendations by the Sweeney commission to elect trustees based on student numbers and not taxpayer population show a lack of awareness of the basic principles of democracy.

In conclusion, the Sault Ste Marie Board of Education warns that no more money can be removed from our system without further adversely affecting the classroom. Today's teachers need support — in-service and additional support staff — to assist in dealing with changes in curriculum, additional students with special needs in their classrooms and more students who are hungry, stressed and affected by family trauma. No change and improvement can occur if that support is not provided to staff.

We are spending more wisely and achieving more efficiencies, and we hope to do more through sharing and not duplicating. However, bringing about change takes time — time to work with our staff and other organizations to achieve changes in classroom education and financial efficiencies. Further removal of money from the system by the provincial government will definitely hurt students more in the classrooms and have a further negative effect on local taxation.

Thank you for the opportunity to make this presentation and explain our board's concerns. We'll be happy to answer questions.

The Vice-Chair: We have a good bit of time left for questions and answers.

Mrs Searwards: I thought it might give you a chance to catch up if you're a little behind in your schedule.

The Vice-Chair: No, that's not a problem. Five minutes per caucus.

Mr Gravelle: Thank you very much for your presentation. Just for my sake, how large is the board — how many schools, the number of students — in terms of the number you administer in the Sault Ste Marie board? I'm just curious about numbers.

Mr Ray DeRosario: We have about 35 schools, I think, in total and approximately 11,400 students.

Mr Gravelle: That's pretty big. In terms of layoffs — it's a question they're going to ask you on the government side anyway, I just know; it's been a consistent pattern emerging and it's a fair question. You had some school closures. Certainly being from Thunder Bay, we're going through the same thing as well, and it's happening all across the province. I think people don't recognize, generally, when we've been sitting in this setting, the trauma that's involved when that is happening in terms of

everybody who's involved, including the parents and the children themselves. In terms of the cutbacks and the things you've done to reduce costs and everything else, in terms of administration, can you tell us what changes you've made on the administrative level?

Mrs Searwards: Do you mean recently or over the last five or 10 years?

Mr Gravelle: Give me the last five or 10 years. Again, it's always forgotten that what's happened in the last five years is incredibly significant. We're not just talking about the last year or as a result of what you've had to do in this past year.

Mrs Searwards: I think that's the point of what we are trying to say. This is cumulative in this part of the world. We didn't have the fat, we didn't have the good years in the 1980s, so we have been doing that over time. Maybe you've got some information on the numbers we've cut.

Mr Gravelle: It's worth putting on the record, I think.

Mr DeRosario: I think it is important to appreciate that we're not talking about a year in isolation; this is something we've been going through for several years. I guess, from an administrative point of view, that's one of the frustrations one can feel with respect to different budgets coming out each year.

One of the things we had hoped is that in the course of development, in terms of planning and changes in education, that there was going to be an effort to recognize the changes or the responses that boards have already taken. That's something we certainly haven't seen reflected as much as we would like to. But over the last five years, for example, we have reduced our operation by approximately 180 positions, right from administration down. Just within the last 12 months we've cut a superintendent and a supervisory officer's department out and restructured accordingly so that what we have left we direct as much as we can to classroom support and make sure it's being used efficiently.

But that kind of thing has gone all the way down the line. We have eliminated supervisory positions, we've eliminated confidential secretaries' positions, we've eliminated management positions in our computer services department, and there are others as well that don't come to mind immediately.

But also, administration in the sense of school administration — because in an effort to try to reduce our operating costs we went through the very painful exercise three years ago of studying all of our schools and, as a result of that, we closed five of our elementary schools, so now we have 28 elementary schools. We were able to do that without changing the program we were delivering to students by making more efficient use of the space we have in the system. But as a result, we lost a certain level of supervision there. Just in the last two years, we've gone through — again it's a painful exercise, but education shouldn't be expected to be protected from some of the things we're all going through in society.

Relocation of some of our programs: We found that we were able to relocate, for example, our French immersion program. Again, our basic goal was to try not to have a great impact on the program that was being delivered but the way we were delivering it. We were able to relocate our French immersion program and relocate our adult

education program and, as a result, reduce our operating budget. If you take all of those collectively, I think we reduced our operating budget in the order of \$1.25 million a year without changing the program that our students were receiving.

Mr Patten: I agree with your statement here where it says, under junior kindergarten, "One of our concerns has been with the province's attitude to junior kindergarten." I agree that the government has an attitude problem in relation to junior kindergarten and adult education and of course, the rationale you've heard for it, which doesn't stand up to the testimony that we've heard throughout here.

One comment under the cooperation section. It seems to me — and this also happens in the health care sector — that hospitals that foresaw the austerity programs that inevitably would take place and school boards that likewise had some foresight and therefore took immediate action now are being jeopardized somewhat, or penalized, for having had the foresight to exercise the kind of restraint or cutting to try to be as frugal as possible. It sounds to me like your board is one such victim.

In both areas, health care and education, the government says that — at least, in the campaign they talked about incentives. I would like to hear from you, because I don't see the incentives for any boards, other than survival, I suppose. What kind of financial incentives truly might a board have that would enable it to objectively and honestly take a look at its administration and possible areas of increased efficiencies?

Mrs Searwards: Can I refer to your reference first to the attitude? I think to be fair we should say that's an attitude that is prevalent in quite a lot of sectors of society, and there are groups in our town who feel the same and people on our board who feel the same. There's this attitude to children and to junior kindergarten and things like that as being babysitting. As board members and an education community, we need to really point out the necessity and the value of these good programs. It's not just a government attitude, it's out there in society. That's one thing.

Incentives: I think the kinds of things we could do with, and I'm sure the others will want to make a comment on that too, are money that would assist us to make change. In the past, various governments have provided incentives occasionally on things they have wanted to do — employment equity, all those kinds of things. I'm not arguing the merit of them, I'm just talking about the kinds of things that you need to do. We need to provide time and space for our administrators and our teaching and working staff to look at different ways of doing things. That does take time, it takes training, it takes in-service. You can't do that and teach in front of a class or carry a full day's workload and often into the night. Most of our staff are working far beyond the regular day's workload now and it's beginning to show. Do you want to add to that?

1500

Mr Don Edwards: Just one other thing. The block grant for transportation is an incentive because it helps boards to cooperate a little better and save on transportation.

Mr Wildman: Thank you very much for your presentation; just a couple of things. On junior kindergarten: As you might expect, we've received a lot of input on that from teachers, boards, parents, and some very good presentations. I really agree with your view that it doesn't make sense to make optional and change the funding for a program and then to announce afterwards that you're going to have a review. It would be better to do the review first. If the government proceeds with a review, is it not going to be now reviewing a much changed program in many boards? For instance, in your board, are you not blending SK and JK —

Mrs Searwards: Yes, we are.

Mr Wildman: — on alternate days?

Mrs Searwards: Not on alternate days yet. We are going to be forced to look at that and we've been talking about discussing that with the separate board. That would help us with transportation savings particularly. I don't think anybody thinks it's desirable to have junior and senior — well, the very best way pedagogically, because we didn't do that in the beginning, but we can still offer a good program. I guess there are going to be boards which aren't offering it at all, so they'll be going in and out, and if they do start it again children will be less well prepared.

Mr Wildman: But it won't really be a review of the program as it was, will it?

Mrs Searwards: For our board it probably would be. I wouldn't be in a position to speak for other boards. It's just a way you deliver it. Ours, as I said, is an integral part of our primary. We used it in the late 1980s to improve and train and do a lot of things, so hopefully we won't have to change it very much. We'd be very worried if we had to remove it.

Mr Wildman: The ministry and the provincial government take the position that it isn't the ministry that is changing or making determination on whether or not to eliminate JK, it's the boards.

Mrs Searwards: I would say for financial reasons.

Mr Wildman: And the financial reasons relate to the 16% cut in the general legislative grant.

Mrs Searwards: Yes.

Mr Wildman: And the change in funding for JK specifically.

Mrs Searwards: I would agree with that.

Mr Wildman: The other question on adult education: Under the legislation as it is worded now, if a student has left school at 16 and has been out of school for four years and is over the age of 21 and then wants to return, they won't be able to participate in the day program. Doesn't that strike you as age discrimination and a matter for the Human Rights Code?

Mrs Searwards: We were looking at it from a program delivery point of view and what our students need but, yes, you're probably right.

Mr Edwards: Mr Wildman, we believe that all our schools should be available to all students of all ages.

Mr Wildman: I really am concerned about your conclusion where your board "warns that no more money can be removed from our system without further adversely affecting the classroom." The government, the minister and the Minister of Finance have repeatedly said: "Look,

the cuts only amount to 2% to 3% of what is expended on education in Ontario. Surely, any institution should be able to find 2% to 3% savings in administration without affecting the classroom." Why can't you?

Mrs Searwards: It depends, I think, on what's gone before. We say we don't have that kind of fat any more and we do need to provide support for our teachers in the classroom. We have been taking out, this year, for instance, aides. Maybe I'll ask Mr DeRosario to talk a little specifically to some of the things that will affect the classroom this year. It's hard to say because we won't know until September and probably by the end of the year when the parents start telling us what they think about what's happening and the teachers start telling us about what they think is happening. We've taken aides out and things, haven't we?

Mr DeRosario: If you want to talk about specifics in terms of how we responded to the budget challenge this year, our priority was to try to protect the pupil-teacher ratio in our classrooms, and we feel we have been very successful at doing that. We haven't really changed to any significant degree at all the size of our classes. But will it impact on the classroom? Certainly it will, because the support services there for the classroom teacher are not at the level they used to be, and there are many different ways that manifests itself.

In our kindergarten program we had a second adult in many classes, based upon need and based upon the size of the class. We're not going to have the second adult in the class any more because we can't afford to do that. But we still have the class, and we're hoping to keep the sizes about the same as they are now. We don't have the kind of library teacher support our classroom teachers are used to. We still have some, but it's very minimal now and it's not, from a program point of view, what one would want to have, but in terms of where you try to minimize the impact, that was one of the places we went.

In terms of hard supplies our classrooms would normally have to support program, they won't have it to the levels they've had it before — that kind of thing. It's the same thing with respect to the kind of cleaning we're doing in our schools; we've reduced some of that. We tried to find those areas that stay away from the classroom as much as we can, but they will certainly be impacting, perhaps not as directly as the case in some boards and some responses. I don't know.

Mrs Searwards: We're taking out teacher aides too, in terms of teachers being now required to provide more services. As we integrate students with special needs into the classroom, which we've been doing at the direction as well of the public and the governments of the past and the present, and we've reduced the number of teacher aides, that kind of support is not going to be there. If you've got a big class, at the maximum we think is desirable and can support, with all these children with different requirements — and as we said in our presentation, there are many more now: all the social issues and the difficulties related to unemployment and change and structural things in the home. That is definitely going to be affected. That kind of support is what we're talking about.

Mr Skarica: I reside where there is a board that has administrative expenses of half yours, and Mr Preston is going to point out his board because he's a neighbour of mine and his board is very similar to this area, and their administrative expenses are half yours as well. But there's another area I'd like to ask you about.

We've heard disturbing evidence that over the last 20 or 30 years, there's been a piling up of an unfunded liability for the retirement gratuity for teachers. We've heard it's up to \$10 billion now, and the boards, even though they agreed to it in the 1970s, have not been setting money aside. I look at the figures for your board and I see approximately a \$15-million unfunded liability for that retirement gratuity. It seems to me the taxpayers of today are going to pay for that retirement gratuity in this jurisdiction for a liability that has been piling up for the last 20 or 30 years; indirectly, the taxpayers of today are going to pay for Mr Wildman's education many years ago. How do you propose to fund that?

Mrs Searwards: Can I answer that generally, and then Mr Campbell will probably speak to the numbers. I've been on the board a long time, and when I was first on the board we were advised, I'm not sure whether by the ministry or staff at that time, that boards were not allowed to fund them, so we didn't. Over the last, I would say, 10 or 15 years we have in this board been attempting to fund our retirement gratuities as much as is feasible each particular year, and we have started to do that. Mr Campbell will tell you where we are with it.

Mr Bert Campbell: The liability is the amount that's owed based on the accumulation that staff currently have, but of course, as you are aware, won't be payable to them until they reach their normal retirement age, which is some years into the future. We've done some estimation on what that cost is and we've made some assumptions around interest rates and inflation, which probably aren't quite accurate at the moment, and we are allocating amounts to reserves annually in our budget to provide for funding those amounts.

If the plans of the government and the teachers and so on change in terms of when people can retire, that will affect those projections. They're not absolutely perfect, but it is a plan to be putting aside some money each year so we won't eventually have to pay — what can I say? — an unreasonable amount in one year and minimal amounts in others. We're trying to smooth it out over the life of the service of the teacher.

Mrs Searwards: We should also add that we have controlled our costs. They are controllable now. In one panel they are capped; in the other panel there are none.

1510

Mr Preston: Two very short questions. Yes, my board is very much like your board, and it's operating at about half the cost. I'd like to know the reasons for that. And if for some reason we did get an agreement with OTF about the pensions, what would happen if it went down to 85? What would happen to your board? What is your age situation?

Mrs Searwards: I think it's the same as any other board. We have a large proportion of older students and the administration will —

Mr Preston: No, teachers. Don't pension off your students yet. They pensioned off students.

Mrs Searwards: I meant teachers. That was a slip of the tongue. I got excited. I thought he was asking me my age for a moment.

Mr Preston: Oh, no. You're about the same age as my wife, very young.

Mrs Searwards: I think it's also the definition of administration, so I'll ask Ray and Bert to answer those questions.

Mr Campbell: In terms of how one board's costs are half that of another, I'd be amazed if that's the case, but maybe it is. In northern Ontario costs are higher, and we don't view our board as being unusually higher than any other board about our size.

Mr Preston: Why higher?

Mrs Searwards: What definition are you using for administrative costs? We need to discuss that.

Mr Campbell: I thought he said total costs.

Mr Preston: No, administrative costs. Your administrative costs are \$111 per —

Mr Wildman: Those are Sweeney's figures.

Mr Preston: Sweeney's? I don't know. He gave them to me. He's the boss.

Mr Edwards: We're aware of Mr Sweeney's numbers.

Mr Preston: They're the same as mine, so they're relative, aren't they? If they're 50% out in your case, they're 50% out in mine.

Mrs Searwards: We looked at Sweeney's numbers because we were concerned too, our trustees were concerned about it. We went and analysed the whole thing and came to the conclusion that they were including different things in different places.

The Vice-Chair: But Sweeney's numbers came from the ministry, though, didn't they?

Mr Skarica: The numbers I have are from the ministry.

Mrs Searwards: It's what they've put in, I think, in different places.

Mr Campbell: Actually, these are not Mr Sweeney's numbers. These are from the survey the Ministry of Education does based on our financial statements, and there are a number of differences in terms of definition that's used by boards, it seems. OPSBA recently did another survey with a different definition — that's our trustee organization — in conjunction with school business officials, but I'm really not in a position here to tell what ours are compared to yours. Boards do vary significantly in how they interpret what goes into those categories.

Mr Preston: If these are all wrong, we need new ones.

Mrs Searwards: We'd be happy to send you —

Mr Wildman: The problem is we need a basic, simpler definition that we all work on. That's the problem.

Mr DeRosario: Could I make a comment on that? That has been a real source of concern for us. The number of different organizations making definition of what's inside the classroom or outside the classroom, or what's administrative and what isn't administrative, is a great source of concern and frustration. Having said that, I don't want to be misinterpreted to present the position

that we're not prepared to have some relative costing done. We should have relative costing done across this province in every school board. But my goodness, there's so much confusion now. Appendix F in the Sweeney report has errors in it for our board. If it has errors for our board, we are suspicious of using that in any kind of rational way to do any kind of comparison.

But should we have some kind of group — and I don't presume to know what the group is. The best ones I've seen are the OASBO definitions. But we certainly do need provincially some group to stop the numbers game and the redefinition and come up with something we can all agree upon. We certainly wouldn't shy away from any kind of comparison like that.

The Vice-Chair: Thank you very much for your presentation. You've certainly added something new.

Mr Edwards: As to Mr Preston's question about the lowering of the retirement age to a total of 85, there are considerable savings involved in this, as you well know, of teachers who retire at 84 max and others who come in. If that's not figured in the factoring, it should be.

Mrs Searwards: It would help us, because the other issue related to that is the fact, if you look at the 4.75, we had to reduce our staff in the last two or three years of the social contract. What's happening now is that we're not having any young teachers coming in, and that's a concern for all teachers.

The Vice-Chair: That's been a problem we've heard about in other places as well.

Mrs Searwards: It's not just an employment issue. It's what's good for education, and we need that energy.

The Vice-Chair: Thank you. We'll have to cut it off.

Mr Patten: I just want to put on the record that Sweeney's report on administrative support costs show a comparability of all three boards in terms of their expenditures, especially if you take into consideration transportation costs, which are unique to the northern board.

Mr DeRosario: We are still uncomfortable with them.

LORNE CARTER

The Vice-Chair: I now call Lorne Carter. Welcome to our hearing, sir.

Mr Lorne Carter: Mr Chairman, ladies and gentlemen, I'm going to take the hearing out on the street, so to speak. You're going to get the opportunity to talk to a parent, someone who's gone through the system, the system that for me started back in the 1950s, and we'll see what we can muster out of the conversation.

I'm pleased to have this opportunity to speak to the standing committee on Bill 34 and the processes it's dealing with. Just to give you a brief introduction to myself, I am very definitely a northerner. I've lived in Sault Ste Marie, Thunder Bay, Sioux Lookout, Fort Frances and Kenora, Ontario. Bud would know where all those spots are, and I'm certain most of you have found out where they are now if you didn't know before.

I'm a parent — I have a daughter at university and I have a son in the school system here in Sault Ste Marie at present, a grade 10 student — and I've been a past school board trustee in Kenora, so I'm familiar with some of the processes and the pains that go on at board meetings.

Personally, my education is that I have a community college diploma which was achieved here in Sault Ste Marie — I won't say when — a few years ago, and I have a master's of business administration degree.

My focus today is to provide a personal perspective on the bill that's being introduced. Excuse me for a moment; age requires me to change my glasses at this point.

The process of consultation throughout the communities in Ontario is a system we welcome with open arms. It's getting down to the grass roots and finding out what the people on the street really feel about things, a process, I might add, that was not necessarily the case in past governments. While special-interest groups were always heard in the past, and should continue to be heard, I might add, it is refreshing to see the silent majority have the opportunity to address the issues which will touch everyone in this province for decades to come.

We are presenters, a focus group gathered together in the different communities across this province in search of the right and the wrong way to make the system a better place to live and grow.

Recently I overheard a question posed that we as Ontarians should compel our government to fix the systems, education included, for all time, to last for decades and decades, to present a solution forever, so to speak. I reflected on the comment and realized that someone was speaking on behalf of our society, perhaps the majority of our society. We have grown too complacent, comfortable, apathetic and generally averse to any changes in the way we do things. The situation posed of course is impossible; the question was impossible.

In our system of government, changes have to flow with the wishes of the electorate. Changes will always be made, no matter how significant or crucial they may be. It's the system of democracy. This standing committee is here today to listen and note the changes we in Ontario feel will fix the system for this time. I, as a part of Ontario, welcome the opportunity to address this standing committee.

1520

Effectively implementing efficiencies in our system and our government is the current focus of government and should be that of each Ontarian. Things are broken, in a mature state, so to speak, and are not in tune with the times. We, as Ontario, have to break out of our paradigms, the little boxes we live in. We need to get constructive, be our best critic and do away with the attitude that "We need changes, but not in my backyard." The education system is no different, and in a changing economy it should be the first place for change, as it is their job to educate people for tomorrow.

The web of society has become so interwoven that we cannot change one aspect without upsetting the balance of others. It is not an easy task to re-engineer, downsize, rightsize or make efficient. The change merchants will tell us that making changes requires the input and buy-in of those being affected or it will not work. This is an important message, of course. Private and public industry alike are feeling the effects of this each day. Education is no different, and perhaps it touches more of our population than any other system we have. The best and smoothest changes come from within. That's a good note

to make. No one knows the system better than those who work in it each semester.

It is our job to provide input in order that a policy framework, conducive and workable within, can be struck. In short, we are only as good as the people we put in place to run things or empower to proceed.

Under "Considerations" with Bill 34 is the junior kindergarten option, the directing of certain adult persons as to enrolment, school board cooperative agreements, school board equalization payments and teachers' entitlement as to sick leave, as I've read it.

I'm going to briefly touch on the kindergarten option and spend most of my time on cooperative agreements. The other items are not within the realm of my expertise or research I've done, and therefore I wouldn't want to express an opinion on them unless I had done so.

First is the junior kindergarten. There appears to be somewhat a duplication in the efforts operating within our communities today; on one hand the junior kindergarten, and on the other hand the day care systems. However, there is no doubt as to the necessity for preschool training of some sort.

I submit only this particular projection on kindergarten because, once again, perhaps the in-depth study required to decide on the educational processes, and that sort of thing, that has to be there is not within my realm of expertise and therefore I'm not going to reflect on it any more than that.

However, I would like to make the observation and comment that in rural and smaller communities a duplication of the services leaves each inefficient and is a costly process. Every effort should be made to cooperate collectively and deliver the service in an effective manner. The government should have the power to negotiate an amalgamation for the community's best interests and, of course, the public purse. Discretion of the school boards, as indicted within the bill, is certainly welcome.

Next, and perhaps the most serious issue before us today, is the issue of school board cooperative agreements. Figures suggested recently to me noted that 47% of education costs are not spent in the classroom. If this were private industry, the result would be ruinous. Our education system has become top-heavy with administration. The alarm has sounded. We have to react before these costs sink the system. The amendments suggest that cooperative agreements are the answer. I agree. It is a very commonsense approach, and it requires some structure to be successful.

A simple approach to our education process is perhaps the best. Ask yourself, what do you want our children to achieve or receive in the education system? The answer, in the majority, would go something like this: We want our children to receive an education that will prepare them for advancement into a career of their choice so they can lead a good and reasonable lifestyle thereafter. There's no mention of geography, race, religion, creed, colour or special needs in this simple response. We should focus our school dollars in delivering this promise efficiently to this generation of students and to those who come after.

A fair and equitable analysis suggests the following headings or divisions for cooperative focus. For the

purposes of my presentation, I've broken it down under structure, amalgamation, rewards, capital investment and standardization.

Under structure: It makes good economic sense to structure a transportation system for transporting students and pupils with the emphasis on the total applicable community school population rather than by school board jurisdiction. Let's go one step further. Cooperations could be further made within the municipal transit systems for senior students, providing a safe and efficient service which would lead to improved transit systems for the community based on better revenues. I can think of one such instance in northern Ontario where, had this transit system idea been instituted, the transit system in that particular community would have survived. Unfortunately, it didn't. It died due to low, uneconomical passenger counts. This can only be a win-win situation for boards and other partnering arrangements such as municipalities.

Further, the use of common facilities between boards, including equipment and buildings, can certainly be scheduled to meet the needs of all within the community. We could start with a simple common boardroom and meetings of each board within the community on a staggered schedule. To take this one step further, perhaps that facility could be the municipal meeting chambers or the local armouries. This suggestion reduces the cost needs by possibly two thirds. It's simple stuff we're talking about here. The use of school buildings considered surplus should have a definite priority over other school board capital schedules. Remember, the owners of these buildings are the taxpayers of the community, and the total community student population has to always be in the facility equation.

Building in the past has been the sole responsibility of each board, and I can think of at least three instances where schools for both the public and separate school board systems were built within 100 yards of each other. Would it not have been more efficient to combine the buildings for service efficiency and even support staffing? Cooperation could have reduced capital costs by possibly one third and perhaps a 10% saving on support costs could have been achieved.

Amalgamations: This is a hot topic, and it's between the public and separate school systems normally. Let us return to my comment above wherein I talked about the simple explanation of why the education system is there, that is, for our children to receive a good education. Let's not lose focus of our educational purpose. Cooperations could lead to amalgamation of boards, administrations, student populations and facilities. That's not too far-fetched. We don't have a lot of things that would stop us from an amalgamation scenario.

Who would ever have bet on the European common market coming together? There were an awful lot of differences that had to be overcome at that particular point. I know I was absolutely struck when I found that their major goal is to get down to one language within the common market in terms of trade and commerce. They certainly have an awful lot more things to overcome than us just amalgamating a couple of boards or whatever the case may be in the community.

Surely common ground, in a sound business fashion, can be sought which preserves the ideals of both or the ideals of all. Smaller communities struggle greatly under this two- to threefold system, and I suggest the ministry could study and negotiate the amalgamation of small boards in the best interests of the student/pupil populations.

1530

Incidentally, I noted earlier that I'd lived in quite a few communities in northern Ontario. My children attended both public school systems and separate school systems. It was usually based on what was most convenient to where we were living at the time in the community, and we didn't notice any difference in the education they provided one over the other, so I don't think there's a lot of difference in that particular aspect.

It may be ideal of me, but I believe the Sault and area lends itself well to combining efforts — cooperative — and the future could spell combinations that could serve as a model for the rest of Ontario.

I felt if we were asking boards of education or regional groups to become more efficient in their dollar spending, then perhaps a reward system of sorts would have to be introduced. In reviewing the reporting concepts in the bill, I salute the accountability built into that particular system. I suggest that a system of rewards be built into the cooperation process for those who have made good progress and created measurable economic results. This could be jointly held discretionary dollars or a system of school area recognition/status certificates. That's just to name a few possibilities under rewards. I'm sure the list would become endless if we were to do a focus group on it today.

Capital investment: Our dollars are becoming scarce as we fight the deficit and correct the loose spending of the past. We have to preserve what little there is, and cooperative efforts, as I suggested above, have to be the foremost focus. Keep in mind that we have to maintain, even improve, the education we are delivering to the students/pupils across Ontario.

What is meant by Mr Carter's standardization? This may be a northern problem; however, I don't feel that way. Areas I would like to see standardized across the province include testing, teacher salary grids, administration salary grids, board remunerations and school operations.

Student standardized testing across the province will provide our students with the best hand up we can offer for their future success. A solid footing in education fundamentals increases their options and develops cornerstones for a good life. The salary and operating issues are self-explanatory and reflect on the efficiencies of the system for better costing formulas.

Generally speaking, it is okay to speak of change in our school systems, but proper standardized guidelines have to be established to make a common smooth transition. As an example, I observed that the grade 9 transition a few years back produced variations in boards across the province, each school system, and even in some schools separately and sometimes at the discretion of each individual department. It surely served to confuse the teaching staff and, from a person experience, it did

not have the support of those served with the task of implementation.

On the point of governing the co-op efforts of all school boards, it is suggested that a mediation system perhaps be introduced to resolve and trouble-shoot the process. It is further suggested that this mediator be an unbiased third party rather than the ministry, thus removing the funder from the equation.

In conclusion, I thank you very much for this opportunity to express my views, which I believe are the common views of a great many Ontarians. Observations over the last few years of our systems has left me with more and more doubt as to the capacity of our system to function with the massive changes required to focus on education for the future of Ontario. Ontario was and still is a great place to live. Let's renew our focus. Let's renew the way we deliver education. Let's think of the future and our youth.

Mr Wildman: Just one comment, in terms of your suggestion with regard to standardized tests. You may be aware that the provincial government has moved in that area. The previous government brought in a commitment to standardize testing and this government has continued it, although cut back the funding somewhat for the testing and the frequency of the tests. So there is that effort to bring that forward.

Just in regard to your brief comments on junior kindergarten, as someone who represents a large number of small, rural communities, I would point out that in many of the rural communities there are not adequate child care programs available to parents who need them. In that sense there isn't a duplication and the junior kindergarten program in Central Algoma, for instance, has almost 100% usage by parents with their students, even though it's optional for the parents to use the program, partly because of that.

I think it's more than that, though. I think because junior kindergarten is a pedagogical experience as well as a nurturing child care experience, there is an additional reason for parents to choose junior kindergarten. But having said that, I'm wondering why you think that northern boards face more of a problem with regard to the other aspects of standardization that you've addressed than, say, other parts of the province.

Mr Carter: First of all, I thank you very much for the information on the kindergarten-day care scenario. That's duly noted. Then I'm going to ask you, are you using a specific reference under standardization?

Mr Wildman: Under 5.5 you say, "Standardization: This may be a northern problem." I'm just wondering why you think it might be more of a northern problem than it is throughout the province in terms of teacher grids, administration costs, board remunerations and so on.

Mr Carter: I suppose what I was doing there was reflecting more on the standardization of testing across the province or where our children stand in the spectrum of things. I'm aware of a lot of young people who finish up their school days here in Sault Ste Marie or wherever in northern Ontario and move on to the big university bin down in southern Ontario, and the failure rate, for whatever reasons, seems to be extremely high.

I don't have any statistic to do with that, but you talk to this parent and that parent and there are a lot of situations involved where the children had an awful lot of problems during the very first year. It might have been just a long way from home that had a lot to do with it or it might have been the fact that our grounding may not have been quite as great as greater Toronto, Hamilton or one of those particular centres.

Mr Wildman: Now I see what you mean.

Mr Carter: That's really what I was reflecting on, plus the fact that I don't have any problem with standardized testing. I went to school in Manitoba and we had standardized testing there.

Mr Wildman: All three parties are in favour of it. It's not a problem.

Mr Carter: Exactly.

Mr Skarica: I just have one comment and one question and maybe you can just give me your views on this. I don't know if you were here for the last presentation.

Mr Carter: Part of it.

Mr Skarica: One of the difficulties in dealing with education is trying to figure out how dollars are being spent, where they're being spent and so on and so forth.

I have a survey here and it has general administration and business administration as prepared by the Ministry of Education and Training and now when we're trying to compare boards to boards, we find out that what's a general administration expense in one board is defined differently in another board and the same thing with business administration etc. It's almost like a system where you try to grab it and, like mercury, it squeezes out one side of the other and through your fingers and at the end of it you throw up your hands and ask what's going on.

Mr Wildman: Like nailing Jell-O to a wall.

1540

Mr Skarica: Yes. Even the Sweeney report supposedly is trying to compare them board to board and we heard, "Well, no, that's not right either." What's your feeling as a taxpayer to hear that kind of information?

Mr Carter: First of all, I suppose what we should do is we should standardize accounting. That would be perhaps a good idea.

Mr Skarica: Yes. Can you believe we spent \$14 billion a year for I don't know how long and it hasn't happened yet, in 1996? It's hard to believe.

Mr Carter: Exactly. Yes, I agree.

Mr Preston: You don't have any statistics and I guess nor do we.

The Acting Chair (Mr Michael Gravelle): A little late in the day to discover that.

Mr Carter: I thought I was going to learn something here today.

Mr Skarica: Thank you. That's my only comment.

Mr Patten: You've put your finger on an issue where we have a variety of definitions of what constitutes the classroom expenditures and support and what is administrative. Hopefully, we will arrive at an agreed-upon figure so that we can do some fair comparisons, because many of the boards of course say their administrative costs are 9% or 5% because they're just thinking at board level, not at the school level, but someone else says, "Oh, no,

administration is your principal, your vice-principal and your department heads."

Mr Carter: Partly.

Mr Patten: Another says: "No, no, not really. The department heads teach." It just goes on and on. So you're right. You've put your finger on something that's important.

One little thing is that very often in comparing, my learning as a result of testimony from many, many people here in these hearings has strengthened for me the considerable difference that is offered in terms of junior kindergarten and general day care. Not to be disparaging about either one, but there is considerable difference, and of course one is that junior kindergarten is half-day and two working parents need some support, usually in the afternoon, which the other day care picks up.

But I would like to engage with you for a moment on the amalgamations. My bias is that I begin with the assumption that bigger is not necessarily best. I could go into the industrial world or into the commercial world where I think there's a recognition that having built up these huge centralized systems has not worked and been in the interest and in fact too much "support and administrative costs" took away from the capacity of people who knew their local customers. You see that in IBM, you see it in General Motors, you see it in a lot of multinational corporations.

My feeling in some of the research I've been doing because of my interest in education now has led me to discover that OISE, for example, the Ontario Institute for Studies in Education, has said: "One of the things we have done to ourselves in the past in having built these very large school systems, especially at the secondary level, polytechs or very, very large high schools, is robbed ourselves of quality of learning for the individual student because we forgot that the human dimension, the person as a growing individual, is such an important aspect in the learning process." Part and parcel of what it means to be an educated individual is the growth of values, the growth of sensitivities, the growth of social skills and capacities.

So I would be one who would always say in these amalgamations — I must tell you that our party has a very simple criterion. We say, "If you want to amalgamate two school boards or three school boards, show me where this is going to be more effective." It's very easy under the school board reductions, because that was the mandate: not whether it makes sense, but if you had to amalgamate and reduce the school boards by half, how would you do it, not whether it's wise to do it in some cases.

I have a situation in Ottawa where we've got one tiny, little school board called the children's school board, which essentially is a treatment centre for kids who are going through therapy. They have an arrangement with another board that provides teachers with special training to work with these kids at the same time, and they're in a very special situation. "We'll just amalgamate the two." This is a giant versus another very, very small unit. On paper it may make sense, but inevitably the smaller units have better quality. When you amalgamate them, in my opinion, they tend to get killed in just the enormity and

the volume of the anomaly that exists in the institutions. Maybe you have a reaction to that.

Mr Carter: I agree with you that biggest is not necessarily the best way to go at things. However, in the business community what I've found in talking with different industries is that customizing is possibly the best. I think that's what I was suggesting in my brief there and in my conversations, that we have to weigh all the items before we say, "Okay, fine, this particular unit, these units, should come together or should not come together."

The Acting Chair: Thank you very much for your presentation. It was much appreciated.

ONTARIO ENGLISH CATHOLIC TEACHERS' ASSOCIATION, SUDBURY SECONDARY UNIT

The Acting Chair: We're now moving to our last scheduled presentation of the day, which is the Ontario English Catholic Teachers' Association, Sudbury secondary unit, Nina Stapleton, president. Please come forward.

The reason I'm saying "scheduled," for the information of the committee members, is that there are two individuals in the audience today who are concerned citizens who would like to have the opportunity to make short verbal presentations afterwards. We'll need unanimous consent for that, which we'll do afterwards. Obviously we've got a time constraint as well, so we'll complete the scheduled interviews and then we'll move on to the two others and hopefully find some time.

Good afternoon. Welcome to the committee and the public hearings. Could you introduce yourselves, and please feel free to proceed.

Ms Nina Stapleton: I'd like to thank everyone for having us here today. I'm Nina Stapleton, president of the Ontario English Catholic Teachers' Association at the secondary level in Sudbury. To my left is Kerri Wiermier, who is an adult-ed student. To my immediate right is Teresa Stewart, the principal of the adult-ed school that our board runs in Sudbury, and to her right is another adult-ed student, Bruce Holden.

The amendments in education that are coming into play in Ontario must be viewed within the context of a broad spectrum of government initiatives which have made social policy and the needs of the common man subject to the whims of market forces and appear to be tailored to monetary gains of private enterprise.

Ideology rather than rationality appears to drive every decision that is being made. Economic considerations have become the new standard directed towards ensuring a major tax cut regardless of the consequences. Anxiety, doubt, uncertainty, frustration and anger have become the order of the day under the guise of a so-called progressive conservatism.

On a personal note, I was brought up by parents who held high the following maxim: "To whom more is given, more is expected." That is why we are here today. As teachers, we feel we've been given a lot. We've been given a lot by this government in the past, by Ontario, by Canada, and we have an obligation to ensure that the rest of society has the benefit of experiencing what we have.

The amendments that occur in terms of junior kindergarten we find very, very offensive, because they will eliminate the requirement for school boards to operate junior kindergarten programs, therefore making provision of such programs optional. Furthermore, the reductions in the funding of junior kindergarten programs do not leave an option for many school boards, a number of which have already made the decision to discontinue the program. The funding changes appear to be a major departure from the ministry policy of the last 30 years.

It's inconceivable to us that the government would take this direction despite the many national and international studies that clearly point out the value of early childhood education programs. If this policy is upheld, we will see a generation of children grow up angry that they all did not have a level playing field at the outset of their educational lives.

Junior kindergarten programs are critical to the future economic and societal wellbeing of this province.

On another note, we are concerned and opposed to the amendments with regard to Bill 34 as they pertain to teachers' sick leave. Sick leave plans are not unique to education. Many employees in other professions and industries have comparable sick leave plans.

This particular amendment is viewed by teachers as a direct attack by the government against a particular group. There is no proof that this particular amendment will bring about savings and will do nothing but create ill feelings and a subsequent poor climate among those entrusted with the education of our most precious resource.

1550

But the focus we're going to have today will be adult education, and before I turn it over the people I brought with me today, I would like to point out the statistics that we had, and I gather another group that was before us had some of the same information.

There are private companies offering these services but at very high, high cost, and the funding they get to pay for these models comes from the government services such as workers' compensation, Ministry of Health, Ministry of Community and Social Services and so on. So it is out of the taxpayers' purse. The figures that are there are from one particular company, and I have cited the name. School boards can offer the same service at a much cheaper cost, so to me it doesn't really make sense that we move in this direction. However the true costs will be much higher for the disadvantaged adult learner, and ultimately for Ontario society.

At this point I'd like to ask Teresa Stewart, who is the principal of the adult school in Sudbury, if she would speak.

Mrs Teresa Stewart: Thank you. As Nina said, I'm the principal of St Albert Adult Learning Centre, and that's under the jurisdiction of the Sudbury District Roman Catholic Separate School Board. Our adult centre began four years ago. With an empty elementary school, a handful of teachers and a small budget, we began to deliver a variety of adult programs onsite, and eventually offsite. Today we serve between 900 and 1,000 individuals annually.

An adult learner, in our definition, is anyone over the age of 18 years of age and out of school for at least one year. The age range presently is between 18 and 74. We offer adult basic literacy and numeracy, secondary credits towards a secondary school diploma, upgrading credits beyond the diploma, English as a second language, programs in computer-related areas, contract work for local businesses, and co-op work placements. So we have quite a variety.

St Albert Adult Learning Centre has become a multi-use facility. The concept that spirits its activity is "community." Adults who attend can not only upgrade their academic needs, but access onsite supports such as day care, a food bank, a clothing depot, counselling onsite and offsite, support with affiliated social agencies and businesses.

It provides an alternative to the usual school atmosphere for learning. It is based on the individual's need. Each student has an individual path he or she follows. It is developed at entry in conjunction with our counsellor. Flexibility of time and program allows for easier access. This recognition of prior learning with future goal aspiration is vital to individual success.

It is impossible to talk about adult education and the adult learner without focusing on quality of life. Whether the individual is centering on basic skills such as literacy or additional qualifications, the purpose is the improvement of the quality of the learner's life.

A homemaker whose children have left home may want to develop new opportunities for herself. An immigrant worker not fluent with either official language needs to improve his or her employment opportunities. A retiree having completed 30-odd years in one career wants to embark on a completely different path.

Beliefs that we carry about ourselves, beliefs about capabilities to succeed and our level of competence, are formed during our childhood years. A child who grows through the formative years with a developing belief in his or her worth as a competent person will in all likelihood become a competent adult, believing in personal abilities to succeed at whatever the task.

There are very few individuals who develop naturally to the state of self-motivated, self-directed problem-solving without vast amounts of support from both home and school. Those of us who are dealing with literacy, upgrading and vocational retraining learners know only too well the impact that a negative self-concept has on an individual's perceptions of competence and perceived abilities to learn.

I've noted here situational barriers, institutional barriers and dispositional barriers as barriers for adults when they come back to school.

It is important to note that as we look at present society, we need to do something. There is a high dropout rate, high numbers of single mothers, high number of literacy problems, large numbers of unemployed, and a significant drop in apprenticeship programs. I've noted numbers for you to look at.

Just recently, Lester Thurow, who spoke at an annual conference on the Investment Funds Institute of Canada, stated that the global economy will continue to feel the pain of restructuring for the rest of the decade. Skills and

education of the workforce are the only things that will matter. There's no economic future for the unskilled.

He goes on to say that 10% to 15% of North Americans are better educated than anyone else in the world, but those without post-secondary education could only eventually find themselves working for Third World wages.

What directions do we need to look at to help the adult learner? I can only respond to this question as an educator.

The success we have had at St Albert's is proof that a high-school-based program with a model of integration can work, and work successfully. Our model has attracted the interest of other school boards who have visited to see the process in action. Recently, we were awarded national recognition by the Canadian Association for Community Education.

The uniqueness of St Albert's stems from its ability to recognize a need in the community and to link with a community partner. I won't go on to page 4, but you can see listed the number of programs that we have actually facilitated with community partners. Without them, we could not have survived, and recall that we are only here in our fourth year.

It is my understanding that 100,000 daytime adult students are in Ontario high schools. Why is that so?

Many adults need more education. Today's high-tech jobs require more education. Employers, colleges and universities demand a high school diploma. Adult learners need language and skills upgrading.

I believe that our high schools meet this need best. They use existing facilities in the home community. Their teaching staff is professionally trained and certified. They offer a wide range of services in one location, working with community agencies and local employees. Most adult students learn the skills and get the credits they need in a five-month to one-year period, and programs are proven and respected by employers.

If we look at the success rate of adults in high schools, a recent survey by OSSTF noted that 28% go on to college and university, 37% find employment within four months, and the most staggering reward is that the number on welfare is cut in half.

As an educator, I've seen the success of these adult students. Two of them are here today to speak to us. The desire of an adult to return to school, be it for a diploma or for upgrading, speaks well of his or her desire to continue to learn. Seeing this commitment has been the spirit behind what I do at St Albert's. My greatest satisfaction comes from the success of an individual who despite all types of barriers — emotional, financial and academic — succeeds and leaves our centre as a renewed individual.

Two evenings ago we had our graduation. We had 88 graduates. We were very proud.

The two students we have with us today are Kerri Wiermier, who has recently graduated and is hoping to go on to college in September, and Bruce Holden, who has come to us for upgrading and has discovered a new talent for teaching. We employed him unofficially as a peer tutor, and he thinks one day he might like to be a teacher. So I'd like to turn it over to Kerri Wiermier.

Ms Kerri Wiermier: Thank you. I'm honoured to have been chosen as one of the spokespersons on behalf of adult learners.

I have been a student of St Albert Adult Learning Centre since October of last year. I can't tell you just how proud I am to be graduating this June. For you to fully understand the extent of my pride, you must understand St Albert. To feel welcomed was an understatement. Not only were their arms open wide, but embracing. The principal and staff, including the office staff, are there to assist us at every turn, behind us all the way, celebrating our successes, lifting us back on our feet from failures. Our goals may range from reading to our children or grandchildren to a university degree, but that's the beauty of St Albert: It services every need.

My self-esteem has never risen higher than now. Thinking that you can accomplish your goal is one thing, but proving it to yourself is so much sweeter. There is a confidence and a pride in all of us that has never been felt before. To see a friend smile when they say, "I'm a high school graduate," or "Cambrian has accepted me," is truly a feeling beyond words. All this would not have been possible without a second chance at education and teachers who are our friends and our guidance counselors. With their encouragement, patience, understanding and support, we have learned to see the potential within each and every one of us. There's no quick judgement, just a helping hand.

We can relate to one another on familiar levels, for we are not only teachers and students; we are adults able to share experiences and learn from each other. We are not treated as mere students, and so a camaraderie forms between teacher and student working together for the common good. St Albert's is truly a partnership in learning. It has given adults from the hardest and dire conditions a spark of hope for themselves and their children. Through adult education, our lives aren't destined for bleakness any more. We are living proof of the success of the adult education system. The principal and teachers have truly gone above and beyond the call of duty, because love and caring are not a part of their contracts.

1600

With the great things adult education is doing for and in the community by reducing the need for social assistance, the retraining and educating of adults, steering them into being productive, vital members of the community, it saddens me to see that the government is taking such a stand against adult education. The cuts themselves are forcing the closure of so many adult-ed programs and making it equally difficult to get an education at a traditional high school. Where are we to turn to? What kind of future does that leave for us? The message the government is clearly sending to us is that you cannot learn from your mistakes and get an education later in life. You must live with it: live with the consequences of your actions, live with your poor choice of careers that has led you to the retraining, but you can't get there due to school closures. "Sorry about your injury, but —"

There are too many happy endings in adult education to let it die without a fight. We can't have people thinking, "I can't read, I'm ashamed, and the government

doesn't care." We can't be creating a social underclass where people want to work but don't have the education to get there. There are many of us with a potential to do great things for this province and country, but without the vision of the provincial government, our minds will be left to atrophy, forcing us to remain on some form of social assistance when all we want to be is hardworking, taxpaying citizens. It's a problem that cannot be ignored. If we shove it under the rug, it won't go away. The heap will still be there when the rug is pulled back.

Wouldn't the deficit be more reduced by educating and retraining the unemployed, be they on family benefits, unemployment insurance benefits, welfare or disability? Wouldn't it be more profitable to get us out into the workforce to become taxpaying, deficit-reducing citizens than sitting at home, waiting for the cheque to come in? We'd rather be working citizens.

One adult education teacher has the potential to graduate approximately 10 students a year, sending them off to work, college or university. Just think about it. In as little as one year in college, a student can be a self-sufficient member of society. Isn't that a bargain? One teacher for 10 people no longer dependent on financial assistance, and that's per year, dependent for what could potentially be the rest of their lives. For me, that would amount to about \$10,000 a year for 14 years, and another \$7,000 for the next 30 or so. It comes to about \$350,000 the government could have saved by hiring one teacher for one year, and that's just myself. Multiply that by the number of adults who are wanting to complete their education. That adds up to a staggering number of dollars that the government could have saved itself by getting adults educated, working and off the financial assistance program. What a deal.

The answer seems clear to me: We need adult education.

Ms Stapleton: Thanks, Kerri. The next presenter, although he doesn't mention it in his written part that you have there, has come to us from industry through an industrial accident and thus needed upgrading to go on to qualify to continue to become a productive member of society.

Mr Bruce Holden: My name is Bruce Holden. I am currently a student at the St Albert Adult Learning Centre. I'm very new at this, so please disregard the cracking in my voice.

There was a time when a person could easily find work in this province. You just followed in your father's footsteps and did what he did. This was especially true in industrial centres such as Sudbury. In its heyday, the International Nickel Co, as it was known then, employed around 30,000 people. Most held labourers' jobs which required little or no education. Those days have gone, however, and now we are seeing a minimum standard of grade 12 being set by most industries. A working knowledge of computers and their programs has become a prerequisite for job applicants.

Where is an adult learner supposed to go to obtain the required courses? I voice these concerns because I am one of the over 80,000 adult learners who are affected by the proposed cuts to education funding.

The amendments may force some school boards to eliminate adult education because of a lack of funding. To make up the shortfall in funding, boards might be forced to increase taxes. But who are the people who will be paying the increases? Are they not the property owners and aren't some of those property owners the adults who need to continue their education? Why would anybody, including myself, pay for those services if we are denied access to them?

People, no matter what age, deserve the right to a proper education; not just for the sake of having it but for using it as they would any tool to create a stronger sense of self-worth in order to go out in the workplace and be productive. Everyone has a need to be needed. I'd felt lost and alone with no direction. I know the empty feeling inside when you cannot contribute. It is by far the worst feeling I have ever had. With the help of the dedicated staff at St Albert Learning Centre I found what I needed to progress. Their co-op program let me find a new direction and by volunteering for their peer tutoring program, I regained confidence in my own abilities while helping others gain theirs.

For whatever reason a person had to leave school, they should not be penalized by not being allowed back into a place of learning. Even the most hardened of criminals is given a second chance through the parole system. It seems that life imprisonment in Canada has been reduced to 15 years and, in some cases, most notably as recently as last year, those convicts have access to formal education that might be denied us law-abiding adults. Leaving school may or may not have been the right thing to do for some, but how long will they be forced to pay for that mistake? Perhaps that would be a life sentence in a different kind of prison. We as a country have also opened our borders to people of many foreign countries. How will they learn to communicate and assimilate if they cannot attend a school designed for that purpose?

What will become of our community? Where will all these people go who are left out? Will they just hang around in the mall, not being able to find gainful employment? Maybe they'll resort to crime to provide for their families. Can an adult learning centre be a cornerstone for a better community? Judging by the institution-of-the-year award bestowed on St Albert by the Canadian Association for Community Education, it can. Though she's too modest to have said it before, Teresa Stewart also received the educator-of-the-year award. A national association for education believed that an adult learning centre was worthy of its top honour. By becoming a partner with the community, the centre can provide a means of developing employable skills for the learners. This can only strengthen the community as a whole.

It took years to run the deficit to the amount it has reached today. Yes, steps have to be taken to curb it, but at what cost? Ontario has long professed to be a partner in learning and now is the time to strengthen the partnership, not dissolve it. People are what make this the richest province in the country. Let's not start putting economics ahead of the welfare of our people. Slashing the costs at this rate is only a Band-Aid. What cost do we as Canadians place on ignorance? Thank you.

Ms Stapleton: Also in the package there's some information specific to our particular school in terms of resources and so on, but if I could draw your attention to one item that's approximately six pages from the end of the package, you'll see that these types of schools develop all kinds of liaisons with business and with employers.

The one in particular that I'm showing you is the one from International Nickel. We know that this is a very large company and we've received endorsements for the type of program that the school offers from many such companies and so we feel that to simply cut the funding to this particular type of education is going to be not only detrimental to Sudbury, but also has a potentially devastating effect across the province. Thank you.

The Acting Chair: Thank you very much. We have two minutes remaining per party for questions, beginning with the government side.

Mrs Munro: I wondered if you could tell us a little bit about the nature of the funding that you receive. I notice that there are a number of groups that obviously play a role in the ongoing development of your school and I just wondered if you could tell us that.

Mrs Stewart: You'll notice on the first page I talk about the programs. The core amount comes from the Ministry of Education and Training, but in order for us to complement that and have the funding necessary to generate our activity, we have to write proposals. Annual proposals are submitted — well, last year it was through the Ontario Training and Adjustment Board. Further proposals are sent to the Secretary of State. We have moneys that we receive from the landed immigrant and newcomers to Canada section of the Secretary of State. We also receive federal moneys for co-op stay in school, again through their initiatives for youth.

When I talk about partnerships, I don't mean money transfers. I'll give you an example of one that's happening now with teen moms. We have the Cambrian College students in co-op with a teacher from St Albert's, a church basement that we facilitate it through and our board that provides overall supervision. So there are four partners that provide that program. Along with the funding that we have to find annually to supplement, we also go into the community to look at partners.

1610

Mrs Munro: I guess my question then is —

The Acting Chair: Things are very tight. Sorry.

Mr Patten: I'm sorry we don't have more time as well, but I think this is probably one of the most graphic illustrations of the differentiation between simply providing an alternative as the government tends to propose that adults can just go take a continuing education course for an hour on this subject or an hour there on that subject and that would do the job. Graphically, your personal testimonies as well, Bruce and Kerri, conclusively, I think, add to the overwhelming body of knowledge that is saying, "Listen, this is a program that provides people who do not just need a course," and in the words of one director of a school this morning that I thought were well put: "Our biggest challenge as teachers with adult education students is we know they can do it, but they often don't know whether they can do it. They don't have faith

in themselves or they don't have the self-esteem that you talk about." That is the difference, that you have that kind of support, that kind of encouragement, it seems to me, that can elevate your sense of confidence and your sense of self-image in addressing what is there. You already had the capacities, but it's the belief in yourself and the human and personal development side that you would not get just on a course-by-course basis. Would you comment on that?

Ms Stapleton: If I could make a comment. What you've said is certainly true, and I'd like to speak from another perspective.

When Teresa started this program, people were scrambling trying to get funds, trying to get placement, trying to get cooperations going with industry. My husband is a comptroller for four companies in Sudbury and I went home and I said to him: "Listen, they've got this program going. Would you consider speaking to your people, getting people into the work sites?" I see lately in the government's agenda that they're looking at giving companies a \$1,000 tax incentive to take co-op students.

I spoke to my husband about this. They've been in business for many, many years in Sudbury, and he said: "We don't like to do that. We don't like taking people in. It's not that we don't feel that we should pay our debt to the community, but it's more hassle than it's worth. We don't really feel that we give these people what we're supposed to give them. We just can't do it, and it's not productive for us and it's not productive for them. I know a lot of places do do it," he said, but he really feels that justice is not being served in the way that it's presented as being served.

Mr Wildman: Thank you very much for your presentation and thank you for coming so far to make it. You certainly presented it in a way that it really hit home with me, particularly you, Kerri and Bruce, in your comments. Kerri, you raised a lot of questions that I would hope at some point members of the government will try to answer in terms of the future of adult education and people being able to contribute to society instead of being trapped in welfare or other types of social assistance.

Could I ask two questions basically? The first one is to Bruce and Kerri: Do you think you could have achieved what you've so far achieved if you hadn't had the option of St Albert's and had been doing it through either correspondence courses or night school continuing education courses?

Ms Wiermier: I wouldn't have received the quality of the education that I received at St Albert's, speaking in terms of, say, the Cambrian College upgrading program. I'm planning on attending nursing at Cambrian next year. Without an OSSD I wouldn't have been recognized as being a qualified nurse, even though I've completed the Cambrian course only because I had a high school equivalency. That wouldn't have been enough to get me a job out in the real world. It might get me to the nursing course and through the nursing course, but it would never get me out there and working. Without an Ontario high school diploma, I just wouldn't have been recognized as being qualified.

Mr Holden: In my own personal circumstance, a back injury has left me incapacitated to perform as an auto

mechanic. My wife is working shift work and she's pulling in extra shifts to try and make up the burden of my lost income. I'm currently on UI, which is only one third of what I used to get, and we still have a mortgage and kids to feed and the like. We cannot afford any kind of day care, and going to daytime school allows me to be home in time to receive the children off the school bus, and when she has shift work, I can be there and make the meals and clean the house.

Mr Wildman: I want to congratulate you both.

What has the cancellation of OTAB meant for the operation of St Albert's, and what do you see in the future to replace it?

Mrs Stewart: It's a good question. We aren't really sure of the ramifications financially. I'm told that there is a possible 10% to 15% cut in the proposal that we have put forward, but still I'm unclear as to what will happen.

The Acting Chair: Thank you for your presentation. It was very effective and much appreciated. As I mentioned to members prior to this final scheduled presentation, there are two individuals, two citizens who would like to have some time. Can we seek unanimous consent to have both individuals have an opportunity? Mr Brown actually has gone out and written something up for us, so do we have unanimous consent for six minutes each? I know we have to be out of here by 4:30 in order to break things down and let the staff do that. We're agreed to that.

MARK BROWN

The Acting Chair: We'll have Mr Brown first. We appreciate your being here and we apologize there isn't more time, but we're glad that we can get this in here. Thanks for pulling this together on short notice.

Mr Mark Brown: Thank you very much for letting me have a couple of minutes to speak.

The Acting Chair: I'm watching this clock real closely, Mr Brown.

Mr Brown: First, just some observations. It's great to see all the stakeholders collected in one place trying to solve one problem. I find that fantastic. We've got teachers, we've got students, we've got taxpayers, we've got board representatives, we've got union members, everybody trying to solve the same problem.

If we could have all those stakeholders solving the problem of enumerating what is the most conducive environment for students to learn in the classroom, it's my opinion as a concerned taxpayer — I have a new-born son, he's a year and a half old now and he's going to be entering the education system four years from now. I was a teacher at one point; now I work in the private sector. Teaching wasn't for me. It wasn't because it was a bad profession. All the teachers I know, all educational professionals, without exception, are always working towards what is best for the kids. When you talk about board members, people who work at the board, they were once teachers themselves and they've moved to the next level. They have new responsibilities, but still they're working towards what's best for the students in the classroom.

Union members, the people who represent the teachers, are working towards what's best for their people, their

membership, which is the teachers and the administrative staff and that sort of thing. Everybody seems to be working towards the same thing but we don't really know what it is. We have studies that say, "This is really good for in the classroom, that's really good for in the classroom," but I think we need to build some sort of consensus. We have the answers. I'm sure they're in some file somewhere, but I think what is really important is if all of us stakeholders, all the people who attended today, went out and sought information based on experience. Taxpayers who have no children have experience; they've been through the school system. You can ask them, "What, in your experience, was the thing that made the classroom the best place to learn when you went to school?" For parents you can say: "What is it that you've noticed about your son or daughter over the years, when they had one year where they really loved school? What was it about that year that made it so good?"

1620

If we collect that information from all stakeholders, the teaching professionals who I think learn — one presenter mentioned that people who work on the front lines know everything. Yes, they have a lot of valuable information, but we need to build a consensus so that when the board sits down with the union, they have the same information and they know what they're trying to accomplish: that they're trying to get smaller class sizes or they're trying to get adult education, all that sort of thing.

I really commend the current government for giving the responsibility to the people who are involved. They're not saying to cut continuing education funding. They're saying if it's important to you, then fund it using the resources you have. Let's face it, the government's primary job, as far as I'm concerned, right now is to eliminate the deficit. That's their job, so they've set out on a course to do that and they've given constraints to each of the boards. That's all they are. They say: "Okay, this is the money you have. Do with it what you want; do with it what's important to you." Now it's up to the boards and the people who are affected to say, "Well, what is important to us?" I think that's where it should all begin.

I have a couple of other comments, if I have time.

The Acting Chair: You've got about 30 seconds left.

Mr Brown: Your accounting problem — I'm a computer programmer now. Start with very general divisions. Have two categories: payroll, not payroll. Next year refine those two categories. Start very simply if you want to have everything consistent across the board.

I have a concern about targeting the 85 factor. It's the same type of thing. Mr Bob Rae did a great thing. He moved towards fiscal responsibility by going ahead and saying, "This is what we have; now let's do something with it," but what happened was that it ended up targeting the people at the bottom end of the scale, the young people. Try to do something to amend the act so that it hits everybody equally. I know it's extremely hard to do, but don't target people who are retiring. They've lived their lives, they've assumed they're going to get a certain amount of money and they've made decisions based on those assumptions.

If you change that in midstream, then they're going to say, "Oh, you're picking on us." It creates a sort of envy. The young teachers will say, "That's great"; the old teachers will say, "Oh, that's no good." It's happening right now. My wife is a full-day senior kindergarten teacher. She finds it very hard to get up and go to work in the morning, and that's the type of thing. You want to have enthusiasm like we saw from Bruce and Kerri, but you want to have it in the classroom because that's what's necessary to survive.

The Acting Chair: I apologize, but I have to interrupt you. We've got to keep going. We have your written part as well and we're grateful for that. We'll get a chance to look at that. I thank you for coming forward.

WILL DEBRUYNE

The Acting Chair: We welcome Mr Will Debruyne to the committee.

Mr Will Debruyne: Six minutes, that's not going to — actually, maybe just a little point.

I misunderstood this whole process here. Had I known a little bit more — the media should have presented it a little better — I would have come here with a little more formal presentation. My interpretation from the media was that this was an open session where people could come in and express their views on Bill 34 and give some recommendations. That's from the media. I don't know where the show goes from here, but that is something you may want to do.

The Acting Chair: I wish there was more of an opportunity for this. It's just difficult in every community.

Mr Debruyne: To give myself a little credibility, I was born and raised here in the Sault, went on to university, got three university degrees and married. I've taught elementary school, high school, private school, Ridley College, and for the last 10 years have been teaching at Sault College. Actually, Bill was one of my students for a course.

To be honest with you, I was very disappointed in the Sault Ste Marie Board of Education's lack of answers to Bud Wildman and Peter Preston on questions such as administrative costs. It disappoints me that people can't tell me what an administrative cost is. I think that's shameful. That would be number one on my list. If it means you have to put down a list that this is an eraser, a pencil, an administrative cost, a salary of a teacher — you can't have those discrepancies. When I hear Mr Preston say his board is operating on almost half the expense of the Sault and they can't answer that question, that really bothers me.

Mr Patten: Not true.

Mr Wildman: It's comparing apples and oranges.

Mr Debruyne: Mr Patten, this is the one I really wanted to draw attention to, cost saving, and the one I truly believe in is the amalgamation of boards. In Sault Ste Marie we have the separate and the public school. I'm not talking about taking the two boards, keeping the same administration and putting them in the same building. We only need one director of education here; we only need a certain pool of supervisors.

I think we're looking at it in the wrong way. We're going from the top down. Let's start in the classroom. What is the class size that we can operate in? I think you can see that by far, we are completely overadministered here in Sault Ste Marie. Sure, they're starting to make strides here with transportation, but reading the media, it seemed like it was an impossible thing, that the two boards couldn't even get together to do busing. Come on now; you're busing students from school to school. Who cares if the school is a separate school or a public school?

Mr Preston: It's still a yellow bus.

Mr Debruyne: Exactly, it's still a yellow bus. My wife is Catholic; I'm nothing, if you wish. I have three children. Our children are in the separate school. One is age six, another one is age four and the other one is age two. I heard a lot of discussion here, but when we talk about stakeholders, I'm hearing the same thing from people who are directly affected by junior kindergarten and adult education. Of course they're going to be screaming and crying and reading — I just wrote a few notes on the back of this, but I would have fallen asleep listening to somebody read their gut concern off a piece of paper, which on the bottom line probably means their job, if you're eliminating it.

Kindergarten, for my daughter, has been a social experience. Do you need a full-fledged teacher in that classroom? That one I don't know. The two teachers my daughter has had were excellent. Could that be somebody who was trained differently, that is, didn't need a university degree and didn't need a bachelor of education? I think that could be the case. Does it mean also that if junior or senior kindergarten is eliminated, our children are going to be vastly affected? I don't believe so. I didn't go to kindergarten because our school didn't have it at that time and I don't feel I've lost anything. I certainly can see the social benefit, not academic benefit of the kindergarten system.

As for the adult education system, at Sault College you don't see that high school student graduating now, jumping into college. There is such a blend of adults — that is, older people who have lost their jobs — and you see the blend of high school students. I can't see a problem in integrating in the same way adults into the high school system, then on into the college system.

The Acting Chair: Mr Debruyne, thank you very much. We apologize again for not having more time.

Mr Debruyne: Thank you very much.

Mr Preston: You want to write something out and send it to us.

The Acting Chair: Absolutely. Write something up and present it the committee.

Mr Debruyne: Okay, I will do that.

The Acting Chair: If I could just let the members know, all amendments must be in the clerk's office by noon this coming Monday, May 27, and they will be available, as soon as the clerk has them, to all the members. We next meet for clause-by-clause on Tuesday, May 28, at 3:30 pm and then again on Wednesday, May 29, at 10 am.

Mr Patten: Are we inviting all the witnesses to join us for clause-by-clause?

The Acting Chair: They certainly can come.

Mr Skarica: Mr Chairman, I have a quick house-keeping matter. There was a question asked, "What school boards have cancelled junior kindergarten?" I've distributed to all the committee members and filed with the clerk a copy of the boards that have cancelled junior kindergarten. That's number one.

Number two: Mr Wildman asked a few days ago, "What is the status of the junior kindergarten review?" I have asked the ministry to look into it. The response they provide me is as follows:

"When the minister refers to a review of junior kindergarten, it's in terms of the reviewing of all education and children's services programs. Staff have been and are presently involved in several initiatives which examine programs for preschoolers and young children. These include the review of education finance; there was an internal study of junior kindergarten which was completed in the fall of 1995." I've asked if they produced a

formal report, and apparently they did not. "There was a triministry directors' working group of children's services" — that was with health, community and social services and education. Again, that did not produce a formal report but it identified young children who were felt to be at risk by the government. In the budget there was \$225 million set aside for the programs, and I can list them if you want, Mr Wildman, but I think you know what they are.

Mr Wildman: Thank you very much. I appreciate that. I'm correct that it appears there is not a formal review of the kindergarten and junior kindergarten programs.

The Acting Chair: Transportation will be available at the front door of the Holiday Inn at 5:15. We're leaving for the airport at 5:15.

Mr Wildman: Thank you all for coming to the Sault. I hope you have a good trip back.

The Acting Chair: This committee is adjourned.

The committee adjourned at 1631.

STANDING COMMITTEE ON SOCIAL DEVELOPMENT

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Vice-Chair / Vice-Président: Gerretsen, John (Kingston and The Islands / Kingston et Les Îles L)

Agostino, Dominic (Hamilton East / -Est L)

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*Pettit, Trevor (Hamilton Mountain PC)

*Preston, Peter L. (Brant-Haldimand PC)

*Smith, Bruce (Middlesex PC)

*Wildman, Bud (Algoma ND)

**In attendance / présents*

Substitutions present / Membres remplaçants présents:

Brown, Jim (Scarborough West / -Ouest PC) for Mrs Ecker

Grimmett, Bill (Muskoka-Georgian Bay / Muskoka-Baie-Georgienne PC) for Mrs Johns

Skarica, Toni (Wentworth North / -Nord PC) for Mr Jordan

Martin, Tony (Sault Ste Marie ND) for Mr Laughren

Parker, John L. (York East / -Est PC) for Mr Pettit

Clerk / Greffière: Lynn Mellor

Staff / Personnel: Ted Glenn, research officer, Legislative Research Service

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Première session, 36^e législature

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Journal des débats (Hansard)

Mardi 28 mai 1996

Standing committee on social development

Education Amendment Act, 1996

Comité permanent des affaires sociales

Loi de 1996 modifiant la Loi
sur l'éducation



Chair: Richard Patten
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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON
SOCIAL DEVELOPMENT

Tuesday 28 May 1996

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DES
AFFAIRES SOCIALES

Mardi 28 mai 1996

The committee met at 1534 in room 151.

EDUCATION AMENDMENT ACT, 1996

LOI DE 1996 MODIFIANT LA LOI
SUR L'ÉDUCATION

Consideration of Bill 34, An Act to amend the Education Act / Projet de loi 34, Loi modifiant la Loi sur l'éducation.

The Vice-Chair (Mr John Gerretsen): I call the committee to order. First of all, I'd just like to point out that the amendments you should have in front of you are the ones with the date stamp on them. I think they're the latest version and have all the various amendments that have been filed in them.

Mr Toni Skarica (Wentworth North): I have another amendment to file. It's a duplicate of one of our other amendments that just has a typographical error as to the subsection number. I propose to file that.

The Vice-Chair: Can we start off then with the clause-by-clause deliberations and vote. First of all, dealing with section 1, are there any amendments to it?

Mr Richard Patten (Ottawa Centre): We have an addition to suggest that this will come in later on when you take a look at the other amendments to this section.

I move that paragraph 27.1 of subsection 8(1) of the act, as set out in section 1 of the bill, be amended by adding "and of per pupil expenditure reports under subsection 234(16)" at the end.

This would enable the strengthening of codes of account for boards. What it attempts to address is those boards which may have been frugal in anticipating required cuts having pre-empted themselves and then been caught with kind of double jeopardy where there is really nothing left to cut and they are forced to cut in a certain category. What this would do is establish a level that is reasonable and justifiable; that would be able to flag that for all concerned and appreciate that a board may not be able to take money from that particular area but maybe from another.

Mr Skarica: The government is intending, as you can see from the sunset clause, to bring in comprehensive education finance reform. The government's position is that this motion would be premature at this point, particularly in light of the evidence we heard in the last few days of the hearing that when these expenditures are broken down, you're comparing apples to oranges as opposed to apples to apples. Accordingly, we feel this would be premature, but we would welcome a similar type of provision when education finance reform goes through.

Mr Patten: How about in the meantime?

The Vice-Chair: Any further comments? All those in favour of the amendment? Opposed? The amendment is lost.

Are there any further amendments to section 1?

Shall section 1 carry? Carried.

Section 2.

Mr Skarica: Mr Patten, do you want to act for the NDP? Why don't we hold the NDP motions until they're here, to be fair? I don't mind standing it down until they come.

The Vice-Chair: All right. Section 3. We have basically the same amendments to it, both moved by the Liberals and the NDP.

Mr Patten: I think this one is self-evident, having heard the testimony that in the program of adult education, for example — well, this is what it is — universality becomes an issue. We heard from some of the northern boards as to where they would be if this were dropped by necessity for economic reasons, financial reasons. In some communities there is no other option, and therefore universality is greatly affected.

I move that section 3 of the bill be struck out.

1540

The Vice-Chair: It's my understanding that since the amendment is directly contrary to what's being proposed here, the amendment is out of order.

Mr Patten: Thanks a lot. I thought you were a friend of mine.

The Vice-Chair: I'm ruling that the amendment to section 3 is out of order.

Mr Patten: The same for the next two?

The Vice-Chair: Just a minute now. Then we have the NDP amendment to section 3, which is the same as the Liberal amendments, and for the same reason I rule that that's out of order.

Mr Patten: You're saying sections 3 and 4?

The Vice-Chair: We'll deal with that when we get to section 4. Are there any further comments on section 3? Shall section 3 carry? Carried.

Returning to section 2 — Mrs Boyd, we skipped section 2 because there was no one here from your caucus. For the same rationale that I used with respect to the Liberal amendment to section 3, I'm ruling that your amendment to section 2 is out of order as well because it's directly contrary to what's being proposed.

Mrs Marion Boyd (London Centre): I'm curious as to why you started when there wasn't a member of each party here, Mr Chair.

The Vice-Chair: Well, we waited about 10 minutes, and there was a quorum.

Mrs Boyd: It is usual practice to wait until a member of each party is available —

The Vice-Chair: If that's the usual practice, then —
Mrs Boyd: — when you are just coming to order.

The Vice-Chair: Right. If that's the usual practice, then I stand corrected and I'll endeavour to see it doesn't happen again. But we did wait over 10 minutes for someone to arrive.

Mr Peter L. Preston (Brant-Haldimand): Mr Chairman, we put all the NDP — we stood down; we didn't just carry on.

Mrs Boyd: That may be, but —

The Vice-Chair: But they also didn't have the opportunity to comment on the two sections that we did deal with, namely, sections 1 and 3.

Are there any further comments with respect to section 2?

Shall section 2 carry? Carried.

We're dealing then with section 4.

Interjection: Did we deal with section 3?

The Vice-Chair: Yes. We did do section 3. Shall we deal with section 4 then? I see there are two amendments as well that are the same as the amendments to section 3, in that that particular section be struck out, which is directly contrary to the section itself, what's being proposed. So I'm ruling that they are out of order as well.

Are there any comments on section 4?

Mr Patten: Just that we consider this to be a radical amendment.

Interjection: That's why it's out of order.

The Vice-Chair: Just a minute now. Whether or not it's a radical amendment, it's directly contrary to it. So the way in which you express your opposition to it is by voting against it.

Mr Patten: Yes, I am aware of that. It's proposed legislation and we want to suggest that it not be proposed. Anyway, proceed.

The Vice-Chair: I understand your point, but is there any further comment on section 4? Shall section 4 carry?

All those in favour of section 4 carrying? Opposed? Carried.

Section 5: I notice that there's an NDP motion that section 5 of the bill be struck out, and I'm ruling that out of order as well.

Any comments on section 5?

Mr Bud Wildman (Algoma): We don't like it.

The Vice-Chair: Then we have an amendment to subsection 5(2.1).

Mr Patten: I move that section 5 of the bill be amended by adding the following subsection:

"(2.1) Subsection 170(1) of the act is amended by adding the following paragraph:

"Retirement option

"17.1 use its best efforts through negotiations under the School Boards and Teachers Collective Negotiations Act, to provide retirement options to teachers employed by it in order to encourage early retirement."

The rationale for this is that in some discussions and some representations made to us, some boards found that the 85 option was pretty heavy. However, some expressed the view that if there were options of 86, 87, 88 or something in between, not quite as costly, any sign of an incentive to those nearing retirement or close to retirement might be enough to attract certain senior teachers to

exercise that particular option, hence leaving room for some new teachers to be retained.

Mr Skarica: The government comment is that early retirement options right now are being discussed between the Ontario government and the Ontario Teachers' Federation, and negotiations are going on at this point. Until those negotiations are complete — the government is basically doing this anyway, but the government doesn't support this amendment.

Mr Patten: You're doing it anyway, but you don't support it. I see. Not very friendly.

Mr Wildman: If the government is doing it, why would they object to the amendment?

Mr Skarica: What I should explain is that we're supportive of the principle, but until the negotiations with the federation and the government are completed, we don't want to tie the hands of the negotiators.

Mr Patten: This seems to me to be fairly broad and probably would encompass anything that might result in terms of some kind of an agreement or understanding. It opens up the options actually.

Mr Wildman: I think Mr Skarica's argument would also then apply to the section of the bill that allows for the Metro Toronto School Board and the Ottawa Board of Education to enter into agreements. Surely the government would not want to tie the hands of the negotiators in those negotiations either, so I guess the government is going to remove that section from the bill.

The Vice-Chair: Any further comments? Shall the amendment carry? All those in favour of the amendment? Opposed? The amendment is lost.

Any further discussion with respect to section 5? Shall section 5 carry?

Mrs Boyd: No.

The Vice-Chair: Hearing no, all those in favour of it carrying? Opposed? Carried.

Section 6: Again we have the amendment that section 6 be struck out, and I'm ruling that out of order, it being completely contrary to the section itself.

Mr Wildman: I am completely contrary to the section, and I think that for all of the members of the committee who heard presentations here in Toronto and travelled to communities across the province and heard presentations, not just from boards and teachers, but also particularly from parents — we didn't hear as many as we would have liked, but the ones we did were very, very effective and heartfelt, on the importance of junior kindergarten for young children's development and for their preparation for their academic careers and life in general.

1550

I really urge the government to consider very seriously the presentations that were made to the committee so that the hearing process was not just some sort of façade, but that the committee and the government are going to respond to the presentations that were made. We saw the video in Sault Ste Marie. It's just tremendously important that we not see the end of junior kindergarten.

The minister, in response to Mr Patten in the House, really didn't give a clear answer as to whether or not there is in fact a review going on. But since the minister has said in the past there is a review going to take place in the junior kindergarten, then it doesn't make sense to have it destroyed and collapse as a program.

Twenty-six boards across the province have announced they're not going to proceed with junior kindergarten so far. It doesn't make sense to have that happen and then find, after a review, that perhaps the government believes the junior kindergarten program should be continued; perhaps changed, but continued. So I really urge the government not to pass this section.

Mr Preston: The comments we heard here and on the road were from psychologists, psychiatrists, interested parents who were concerned with early childhood education. The federations were concerned with junior kindergarten. I still continue to differentiate between the two and therefore this doesn't affect early childhood education, which is the important matter.

Mr Patten: Of course it affects early childhood education for a number of people, probably those who can't afford other options. Boards themselves will have to let it go, as I think we all would know, not because they don't believe that the program is worthy because indeed we had a number of boards that had said they didn't exercise the option of junior kindergarten until it was mandatory, however, having installed the program, their experience says, "We now realize the value and the strength of it and its contribution to the child and therefore we do not want to give it up." They urged us to retain it as a mandatory program.

Whether it's mandatory or not is not the issue. If it's local option, that's fine with me because most boards, I would say, would keep it. It's the loss of the funding that determines whether the usage continues or not and that, in my opinion, does not provide for universality. It means that those who haven't got the economic means or the financial means are not able to exercise that option at all.

Mr Preston: I'm of the feeling that junior kindergarten should start — I'm sorry. See, I'm even using the terms interchangeably. Early childhood education should be started earlier with differentiated sites, differentiated staffing, and that way we'll be able to afford starting it earlier but under a different program. When they get to regular kindergarten, they can do their educational continuum. That sounds wonderful. That's where they can do their intermingling and start the formal part of it. But I think early childhood education goes back earlier.

Mrs Boyd: I think none of us would disagree that there needs to be more than just junior and senior kindergarten in the schools in terms of early childhood education because there's no question that the research shows that the earlier children begin to experience the benefits of a developmentally based education, the more likely they are to be able to have good self-confidence, to have good skills and so on.

But what the member doesn't seem to understand is that early childhood education not provided through publicly funded education is only within the means of those who have a good deal of money and those who are subsidized and there's this huge gap —

Interjection.

Mrs Boyd: Oh, are we hearing then that the government is going to put money into early childhood education? Because that certainly is not what is suggested by your budget, and it is certainly not what is suggested by the way in which this particular government has talked about early childhood education.

The other thing that is necessary to understand is that where the research shows this to be of benefit, it shows it to be of benefit when it is high quality, where it is regulated, where it is available to the full range of children, not just to one group or another. I think the member may be correct that there are other ways to get early childhood education, but in Ontario in 1996 there are very few communities and very few parents who really see any choice.

Mr Wildman: Mr Chair, I won't prolong it, but I would say that from the presentations that were made in the hearings, this matter along with adult education were the two most important aspects of the government's legislation in terms of the concerns raised by many, many people who made presentations.

We heard from a lot of very worried individuals and groups about the future of junior kindergarten, all of whom said that junior kindergarten had benefited those 100,000 students who are currently enrolled in junior kindergarten across the province. This is affecting an awful lot of kids and a very, very wide number of families and communities.

If the government is serious about a review, I reiterate, it doesn't make sense to move this change now. Why not wait till the review is finished?

The Vice-Chair: Anyone else? Shall section 6 carry? All those in favour of it carrying? Opposed? Carried.

Section 7: There's an amendment to it.

Mr Patten: I move that subsection 171.1(2) of the act, as set out in section 7 of the bill, be amended by striking out "may" in the first line and substituting "shall."

Again, for consistency and for fairness, many representations identified that they felt this should be a requirement of all boards. While one may say — and I believe I understand the intent of the original legislation, which is, you say "may" in terms of entering into agreements, but each board must report. So presumably, if a board has done nothing, that board would find itself in a somewhat embarrassing position when called to task by the ministry or whomever it might be.

However, we also heard from boards that suggested that they had in anticipation entered into agreements and saved money, and will now be required in this particular area to find further funding. So their efforts prior to this legislation, of course, will mean double jeopardy for them. But, in fairness, the representations suggested, "Listen, require all boards to enter into agreements in terms of finding ways to be as financial frugally and efficient and effective as possible."

Mr Skarica: The reason for this amendment is that, although some school boards are currently involved in cooperative agreements, other school boards have indicated to the government they have no authority to enter into such agreements. Accordingly, this amendment clearly enables boards to enter into such agreements. Adopting the Liberal amendment would then force boards to enter into agreements with MUSH sector institutions and would in effect expand the jurisdiction of the minister to enable him to control institutions beyond the purview of the Education Act.

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Mr Patten: Can I ask a question? Which boards are not permitted to enter into agreements? This is with-

out — not coterminous boards but not other educational institutions — this is outside of the educational area. Is that what you're referring to?

Mr Skarica: As I understand it right now, some boards are not entering into the agreements as other boards have done because they don't feel they have the legislative authority to do it. That's my understanding. This will clearly enable them to make those agreements.

Mrs Boyd: For a number of years there's been encouragement for boards to do this. Some boards have complied and been very happy with the results. There are some boards whose legal advisers suggest to them that they don't have the authority to do that under the Education Act, and the government is just saying, "Yes, you can do this under the Education Act," and that's why they're doing it.

I think if you said "shall," you would have the effect you said; you didn't want to disadvantage those who had already entered into such agreements, and it seems to me that you might find you had done so.

The Vice-Chair: Mr Wildman?

Mr Wildman: No, that's fine. My colleague made the comment.

Mrs Helen Johns (Huron): I agree with Mrs Boyd. In the area I represent, one school board feels that it would be to the detriment of their taxpayers to be forced to enter into an agreement, because they're a lower-spending board. As much as I try very hard to get them to do things that make financial sense, if they had to enter into every sector, for example, transportation, purchasing, in some cases it would be to the detriment of that board.

I feel very strongly that I can't accept the Liberal amendment because it would do some very serious damage to one of the boards in my riding, for example.

Mr Patten: That wasn't my intent obviously. It just meant that there would be some obligation to demonstrate effort. You'll be able to pick that up by the reporting process, of course, and if it is not possible in one area versus another, it's explained as to why it would not be advantageous, but I think it would keep a level playing field in that there is some effort shown.

The Vice-Chair: Any further comments with respect to the amendment? All those in favour of the amendment? Was that two or one in favour? Just one. Opposed? That's lost.

Any further comment on section 7? Shall section 7 carry?

Mr Patten: There's another one in there.

The Vice-Chair: No, the next amendment is the addition of section 7.1. What we're dealing with now is just section 7 itself.

Shall section 7 carry? Carried.

Now an addition, which is section 7.1.

Mr Patten: I move that the bill be amended by adding the following section:

"7.1. The act is amended by adding the following section:

"Maximum allowance

"191.1. For the 12 months beginning on December 1 in each year, the amount received by any member of a board under section 191, not including reimbursements for travel expenses, shall not exceed \$20,000."

For obvious reasons, a cap was likewise addressed by some representatives, in particular parent councils, parent groups, and was one of the recommendations of the Ontario School Board Reduction Task Force.

Mr Skarica: As you recall, the Ontario Royal Commission on Learning recommended a similar cap for compensation for trustees. The Royal Commission on Learning also recommended a careful review of the responsibilities of school board trustees. The concerns raised in this motion will be considered as part of the broader review of school board restructuring presently under consideration in response to the Sweeney report.

At this time, the government does not support the amendment because, along with the capping of the salaries of trustees, one has to consider their responsibilities.

Mr Patten: Am I to take it that you're saying this is not required because the government has some plans to review or change the nature of governance of boards across the province in any event?

Mr Skarica: As you can see from our amendments to section 9, it's clear the entire area of education finance reform is going to be looked at, and this is one of the areas that is going to be looked at under that review. That's my response to you at this time.

Mr Patten: So you would lump governance under finance review?

Mr Skarica: No, I wouldn't, but that's my response as to why we don't support it at this time.

Mr Patten: I see.

The Vice-Chair: Any further comments with respect to this amendment? All those in favour of the amendment? Opposed? It's lost.

You have a further amendment, section 7.2, Mr Patten.

Mr Patten: I move that the bill be amended by adding the following section:

"7.2 The act is amended by adding the following section:

"Limit on number of board members

"233.1(1) The minister shall,

"(a) develop a formula to limit the number of members of a board in relation to the number of pupils enrolled in schools or classes under the jurisdiction of the board; and

"(b) propose amendments to this act to give effect to the formula.

"Same

"(2) The minister shall use his or her best efforts to meet the requirements of subsection (1) in time to affect the number of board members to be elected in the 1997 regular election under the Municipal Elections Act."

Mr Skarica: The government is opposed to this motion, given the concept that was proposed in the Sweeney report. The government currently is reviewing school board restructuring as proposed by the Sweeney report. Until that review is done and until decisions have been made as to what to do with the recommendations of the Sweeney report, we feel this is premature at this time.

Mrs Boyd: Could I ask a question about the language in here? "Develop a formula," does that mean the scheme would include dealing with the number of aboriginal students and the number of francophone students, for example, both of whom have constitutional rights and

have representation on school boards now? I'm just curious as to what a formula would mean in this area.

Mr Patten: I don't mean it in the sense of being limiting of any group. It really is in terms of the numbers related to the enrolment. It's not meant to be discriminatory in terms of who makes up the representation.

Mrs Boyd: Then obviously we would have to oppose it, because right now, given the percentages of francophone and aboriginal students certainly in some southern school boards, having a formula that was strictly based on enrolment might very well be discriminatory. I think it needs to be addressed and I understand from Mr Skarica that it will be addressed in terms of the ongoing discussion. I think to put this in could very well be prejudicial.

I look at our particular area. We have one aboriginal representative and three francophone representatives on our public school board. If you were doing it strictly by enrolment as opposed to specific constitutional interests, you might very well not come up with those numbers, and that could be a problem.

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Mr Wildman: I agree with my colleague and recognize that the proposals have been made, and were being considered when we were in government, for limiting the number of trustees. Mr Sweeney has made some recommendations, and I look forward to the government's response. Right now there is provision for one aboriginal representative to be on a board if a board is educating students from the aboriginal community. If you don't have that in your amendment, then you might be open to being accused of abridging those constitutional rights.

Mr Patten: The spirit in which this was proposed was certainly not to limit the required — this was essentially taken from the Ontario School Board Reduction Task Force, and I assume there would be minimum numbers and maximum numbers and that those took into consideration a required representation that would be called for constitutionally. That certainly wouldn't be the intent. If that's the only thing standing in the way, I would entertain a friendly amendment to acknowledge that this is done recognizing the constitutional representational requirements. It is merely meant to be frugal in having the number of trustees sit on a board but still honouring the representation that's required.

Mrs Boyd: I'm quite sure that the minister does not need to be empowered by this amendment to offer amendments to the act once a formula is determined. The minister can do that to his act now. The purpose of this appears to be to empower the minister, once this decision around formula is made, to bring forward amendments, and that is absolutely unnecessary and redundant in the act.

The Vice-Chair: Any further comments? If not, I'll call for a vote on the addition of section 7.2. All in favour? Opposed? That's lost.

Dealing with section 8: Mr Patten, an amendment.

Mr Patten: I move that section 8 of the bill be amended by adding the following subsection:

"(4) Section 234 of the act is further amended by adding the following subsections:

"Tables specifying per pupil spending limits

"(13) The minister shall prepare tables specifying the maximum amount to be spent annually by a board, on a per pupil basis, in each category specified by the minister for the purpose.

"Same

"(14) The tables may specify different maximums for different boards or classes of boards.

"Same

"(15) The minister may amend the tables from time to time.

"Per pupil expenditure report

"(16) The treasurer of every board shall prepare a per pupil expenditure report in respect of every year and shall submit a copy of the report to the ministry at the same time that it submits copies of the financial statements and auditor's report in respect of the year under subsection (9).

"Same

"(17) A report under subsection (16) shall be prepared in accordance with any guidelines issued under paragraph 27.1 of subsection 8(1) and shall state the amount that the board spent during that year, on a per pupil basis, in each of the categories included in the tables.

"Impact on legislative grants

"(18) When making legislative grants regulations under subsection 11(3), the minister may penalize a board that exceeded a maximum specified in the tables."

This is in response to the attempt to develop the kinds of codes of accounting that really need to be more universal when doing comparisons, and having some basis on which to do some comparisons, and likewise to enable the ministry to know, when making requirements of boards to reduce expenditures in certain areas, and it's contained to certain areas, that some boards may already have made some cuts beyond what is reasonable. I see it as two-sided, that there is an effort here to spell out what are the codes of accounts or tables, if you will, and the kind of reporting that can be done that will enable people to be more objective in their management of the resources and also of transfers.

Mrs Boyd: My question to the mover of the amendment is, is the intention here for dividing the entire budget, both what is raised municipally and what is given provincially, the entire amount of that to be divided by the pupil enrolment and that then becomes the per pupil cost, or are we talking about the instructional per pupil cost, which is a somewhat different figure and to which certainly in my recollection there was never a whole lot of agreement about how it was calculated, or is it some other method you were thinking of? There certainly would be differences in terms of school boards, and you provided that that might be different. Were you trying to get at the ceilings?

Mr Patten: This doesn't deal with the level of the ceilings at all. It just attempts to identify some degree of consistency, knowing that there will be some variables with different kinds of boards, but for comparative purposes and for the ministry to be aware of what a particular board is spending in an area already. So we see this as helping to strengthen the financial management, and appreciation for what is considered to be reasonable

to spend in a particular area. If it's higher or lower for whatever reason, then there's an explanation for it, but to arrive at some kind of common codes of accounts in accounting for the expenditure of the resources. It doesn't deal with the level of the resources, which we would all agree are insufficient at this time.

Mr Wildman: Actually, when I first read the amendment, I was thinking that this would be, along with the other things that Mr Patten has mentioned, a way of starting to be realistic about the ceilings, because the ceilings are completely unrealistic in terms of per pupil expenditure. Right now, I think all the boards in the province, maybe with the exception of one, are spending way above the ceilings, so obviously that has to be dealt with.

Also, we need to come to some agreement across the province on what kinds of expenditures are what, because there are disagreements among boards and between the boards and the ministry. We saw that in the exchange in Sault Ste Marie between the director of education and one of the members of the committee, Mr Skarica, so I think that would be helpful.

Right now, though, perhaps what would be useful for the committee in determining how to deal with this amendment is if Mr Skarica or one of his colleagues could elaborate on how the general legislative grant is now arrived at. The ministry must have per pupil costs that they have — I think they do — so how is that arrived at and would this proposal from Mr Patten be of assistance in this process and getting some kind of figures and tables that we all can agree upon or not?

Mr Skarica: I can't answer that question. It was a surprise to me too. The ministry provided me with a breakdown of all the expenditures — there are 10 categories — and I had assumed that business administration was business administration. Then we found out late in the hearings that business administration for one board can be something different from another — it's totally shocking — and we could spend \$14 billion a year and not know what we're spending it on and have every board have different definitions of their expenditures.

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It's my feeling and the government's feeling that this amendment is premature. What's really needed, and I think we heard this from everybody, there was consensus from everybody in the hearings, all parties, that we need dramatic education finance reform. We have to look at this whole question so that we know, we can compare apples to apples and oranges to oranges. So the government's position is that this is just premature at this time.

The Vice-Chair: So are you withdrawing the bill until we get finance reform?

Mr Skarica: No.

The Vice-Chair: I thought I heard something like that, but I may have been hallucinating.

Mr Wildman: The whole bill is premature.

Mrs Boyd: You live in hope, don't you?

I would like Mr Skarica to confirm, however, that in fact it is possible now to know what is — the way the GLG is calculated, if I'm right on this, is based on having a knowledge of what the board submits as a per pupil cost. Is that not true?

Mr Skarica: That's my understanding, and then there's a percentage rate of grant and it appears on this chart. How that's arrived at I have no idea, but I imagine there must be a basic —

Mr Wildman: It's based on their assessment.

Mrs Boyd: Their assessment base and so on. I'm not sure that the gathering of the information is enhanced by this particular motion. I think we all would like to know and sort out what exactly is meant by a per pupil grant, what's included in that and so on, and I think it became awfully clear, certainly in terms of reading Hansard, that there was no clarity on that. I can tell you that five years ago there was no clarity on that and empowering the minister to find this out doesn't work. The minister's already empowered to find it out and the minister hasn't been able to find this out for a long time.

Mr Skarica: We had three weeks of hearings and we weren't able to find out.

Mrs Boyd: I know, and that's a function of handing over a huge amount of responsibility to municipal school boards to run the school system over many, many years. The whole thing kind of grows like Topsy and the reason that I think most people working in the field have said there has to be a thorough examination of education financing is we have to find a way to phase in any changes so that no particular municipality is being overly affected. It's a very complex job, and this is not something that can be accomplished overnight.

Mrs Johns: I just want to confirm what Mrs Boyd said. The other day I met with my board of education and they came up with an administrative cents per dollar that they spend in their school board and they didn't take into account any principals' salaries. They weren't considered an administrative cost, although when you ask the principals what they did, half of their day was on administration. It's a vision that has become very clouded and I think we have to do a lot of work on that too, so I agree.

From my board's perspective, settling on maximums isn't what's going to solve the problems in my boards. We have to decide on what's a fair minimum and work with that dollar value. Because this, I don't think, stops the two-tiered education system we have in Ontario, which is that some boards have money and some boards do not. On the other side, we need to find a level that every student is entitled to have spent on them for education and then move forward with that number. I'm opposed to this amendment because I believe we should be looking at minimums to ascertain what our children need as opposed to saying, "You can't spend above that."

That also brings into effect what we do for special-ed children and people who may require a different value, where we stop them from getting the dollars they need. I think we have to allocate a minimum and then look at the special needs of people within our community and say, "How can we best help them?" This is counter to how I believe we should ascertain how our dollars should be spent in education, and I won't be supporting it.

Mr Wildman: I agree with a lot of what Mrs Johns has just said — and I don't think you meant this — not because we might be saying, "Okay, this is a minimum and that's it," but to determine what all students should be entitled to I think is a legitimate way to go.

I'm concerned about (18) here, where it says, "When making legislative grants regulations under subsection 11(3), the minister may penalize a board that exceeded a maximum specified in the tables."

Unless we deal with the ceilings realistically, as long as those ceilings remain in place, a lot of boards could be penalized, and that doesn't just mean the Metropolitan Toronto Board of Education or the Ottawa Board of Education. It would be boards in every part of the province, because every one of them is above the ceilings or nearly all of them are.

While I really have sympathy with what Mr Patten is attempting here, I do think this should be part of an overall approach to financing education and reform of financing education, so I would be worried about that, not because I think this particular minister might come in and just say, "You can't spend so much more than this other board," or something, recognizing that the tables can specify different maxima for different boards or classes of boards in the amendment.

How those would be determined is really the central question. What is a decent level of expenditure for students in different parts of the province? You might be able to make arguments for saying in certain rural areas it should be more, in certain parts of the north it should be more, in certain urban areas it might be a little less, in areas where there is a large immigrant population it might be more. How are you going to deal with that? That's got to be part of an overall package, I think.

Mr Patten: I'm personally in agreement with these comments. In the absence of finance reform, I think everyone acknowledged there has to be some clarity around codes of accounts and definitions of what constitutes the various categories of expenditure, so this was an attempt to ameliorate that. Now I'm told, "You can expect finance reform." Fine, that's good. I think everyone will welcome that, but in the absence of actually having it, it was within this context that this was proposed.

Mr Skarica: I'd like to add that, although many of the Liberal motions are being voted against because they appear to be premature, I found the ideas within them very good and we're going to pass them on to the education finance reform, so you may see them resurface. I actually find favour with many of the ideas and I think it's pretty creative of Mr Patten.

The Vice-Chair: In that case then, you'll vote in favour of the amendment?

Mr Skarica: No. They're just premature.

The Vice-Chair: You'll still vote against them.

Mr Skarica: Just trying to be nice to him.

The Vice-Chair: He needs that every now and then.

Any further comments with respect to the amendment to section 8? All those in favour of the amendment? Opposed? The amendment is lost.

Any further comment with respect to section 8? Shall section 8 carry? Carried.

Section 9, and I'll take these in the order that they're in the package, so there is the government amendment.

Mr Skarica: I move that subsection 257.2(2) of the act, as set out in section 9 of the bill, be amended by striking out "may make an equalization payment to the

Minister of Finance" in the first and second lines and substituting "may enter into an agreement with the minister to make an equalization contribution."

These amendments are in response to concerns raised during the public hearings that money raised by local taxation for school purposes was being paid into the consolidated revenue fund and that a school board should be able to contribute its share of the expenditure reductions by means other than direct payment. In addition to other measures of the bill that support local decision-making and flexibility, the government believes that these amendments will provide options for school boards to ensure that students have access to quality programming across the province.

Mr Patten: Let me ask a question. If you remove equalization payments to the Minister of Finance from the section, where would these resources go in the final analysis?

Mr Skarica: There's another amendment that's coming after this —

Mr Wildman: I was just going to suggest, Mr Chair, it might be helpful if we had all the government amendments just read right into the record at the same time, because they are a package it looks to me.

Mr Skarica: They are a package. If we have consent to do that, I could do that.

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Mr Patten: You mean under section 9?

Mr Skarica: Under section 9.

The Vice-Chair: There's no problem with that on the understanding that they'll be voted on one by one.

Mr Wildman: Oh, certainly.

Mr Skarica: Moving forward, the next motion is really housekeeping based on the prior proposed amendment.

I move that subsection 257.2(5) of the act, as set out in section 9 of the bill, be amended by striking out "the payment is made by the board to the Minister of Finance" in the fourth and fifth lines and substituting "the agreement in respect of the year is made under this section."

Moving forward to the next government motion:

I move that section 257.2 of the act, as set out in section 9 of the bill, be amended by adding the following subsections:

"Contributions

"(5.1) If a board decides to enter into an agreement under this section, the board and the minister shall discuss ways in which the board may make the equalization contribution.

"Same

"(5.2) An agreement made under this section shall specify the ways in which the board will make the equalization contribution and may provide for any arrangements for the making of the contribution, whether direct or indirect, whether by means of transfer, setoff, forgiveness of a debt or otherwise and whether or not involving another board, a municipality or any other person.

"Same

"(5.3) A board may make an equalization contribution in accordance with an agreement under this section."

Mr Wildman: How do you define "setoff"?

The Vice-Chair: We can get into discussion on that after we have all the amendments. We have two more.

Mr Skarica: I move that subsection 257.2(6) of the act, as set out in section 9 of the bill, be struck out and the following substituted:

"Deemed purpose

"(6) A sum contributed as an equalization contribution shall be deemed to be,

"(a) in the case of a board to which subsection 114(1) applies, a sum required for a separate school purpose, within the meaning of subsection 114(1);

"(b) in the case of a board to which subsection 236(1) applies, a sum required for a public school or secondary school purpose, within the meaning of subsection 236(1);

"(c) in the case of the Metropolitan Toronto School Board, a sum required to meet an expenditure or obligation of the board under the Municipality of Metropolitan Toronto Act, within the meaning of clause 139(1)(g) of that act; and

"(d) in the case of the Metropolitan Separate School Board, a sum required to meet a cost, charge or expenditure of the board under the Metropolitan Separate School Board Act, 1953, within the meaning of subsection 16(1) of that act."

Finally, I move that section 257.2(7) of the act, as set out in section 9 of the bill, be amended by the following subsection:

"Repeal

"(7) This section is repealed on December 31, 1998."

The Vice-Chair: That last amendment you read is the one that replaces the other one because of the typographical error?

Mr Skarica: That's correct.

The Vice-Chair: Did you want to speak to all of the amendments?

Mr Skarica: Yes. As Mr Wildman pointed out, they come as a package. I've spoken to the first one. If I could go to the one that authorizes an agreement between the board and the minister to discuss ways in which the board may make the equalization contribution, these subsections provide that when a school board agrees to enter into agreement to make an equalization contribution, the board and the minister shall engage in discussions as to how the board might contribute.

The agreement might provide for offsetting of revenue that the board might otherwise receive from the minister or another board. For example, negative grant boards may educate pupils of coterminous boards. If the coterminous board does not pay a fee to the negative grant board, the province does not have to pay the grant on these fees. This money is credited by the province to the account of the negative grant board. These new subsections make transparent the process that was contemplated to take place between the negative grant boards and the minister.

Other ways could include setoffs and forgiveness of a debt, and could involve municipalities and other boards.

Mr Patten: What's a setoff?

Mr Skarica: Offset.

Mr Patten: You could set it off from this time to next time. It could be a time concept.

Mr Skarica: Dealing with the sunset clause, we heard from everybody during the hearings that it was clear that

what's required in education is education finance reform. This amendment makes it clear that equalization contributions need be considered in the broader context of education financing. To reveal our determination to go through the process of education finance reform, this sunset date is set to coincide with the education finance reform process and is in response to the evidence and concerns we heard regarding the equalization payments from a variety of groups.

Mr Wildman: I still don't know what a setoff is. I think you may mean "offset," but I'm not sure.

Mr Skarica: They told me to withdraw it.

The Vice-Chair: Withdraw what?

Mr Skarica: The word "setoffs." These are some further examples of what we mean by that subsection.

Mr Wildman: This is a setup.

Mr Skarica: The Metropolitan Toronto School Board waived tuition fees for students attending its schools from the Metropolitan Separate School Board when the ministry reduced its grants to the latter boards. That's the type of situation — offset/setoff — that we're contemplating.

The Vice-Chair: Any discussion on these amendments?

Mr Patten: Of course. Which one are we beginning with here?

The Vice-Chair: The first one. It's the one that deals with subsection 257.2(5).

Mr Patten: It sounds like there's an increased capacity for skating around the issue. The intent of these amendments would be to expand the possibilities of retrieving funds from a negative grant board that would include transfers from another board, for example, and any other special grants that are there for special needs, or whatever it may be. I think that's in the legislation already, that the equalization payments are to be considered before any final grants of any kind are made to a board. Let me stop there. This is true? This gives you a wider range of being able to recoup funds?

Mr Skarica: That's not the intent of it. The intent of it is to address concerns we heard from the parent groups in Ottawa, for example. They did not want their property taxes paying for fixing the potholes in other parts of Ontario. The purpose of all these amendments collectively is to make sure that whatever moneys are recovered from negative grant boards stay within the education system. That's the intent and purpose of those amendments, to make sure that's clear.

Mr Patten: This bill is triggered by the \$400 million required by the Treasurer, so if you don't satisfy the amount — in other words, if the Ottawa board or the Metro Toronto board make their contributions and they would be in the neighbourhood, probably, of about \$80 million, which is fairly substantial — 20%, something in that neighbourhood, of the \$400 million that's being asked for by the Treasurer — and their contributions stay in education, where will that money be spent and what's the assurance that it truly does stay in education and doesn't go off into general revenues to support the deficit reduction or tax break?

Mr Skarica: It's important to realize that it's up to the boards; it's permissive. First of all, the boards have to

come to an agreement with the minister and then the board as well goes into negotiations with the minister to direct where moneys go, so if any moneys do get transferred to the minister, the board has a say as to where they go. I can't imagine they would say it should go to fix potholes in the rest of Ontario.

Mr Wildman: I listened very carefully to the amendments and the explanation Mr Skarica has given, and I must say that I think the amendments are an attempt to improve the section.

Mr Skarica: Thank you, Mr Wildman.

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Mr Wildman: No, I think they are a genuine attempt to do that, but it still raises concerns in my mind. I'm happy that you've included in it a sunset provision, but that's, I guess, predicated on the assumption that education finance reform will be in place by the end of 1998, which may be a good thing, and may or may not happen, since we all know education finance reform has been talked about in this province for a long time. So while I see it as an attempt to improve it, I am worried. I'm worried because I'm not sure exactly how these negotiations might take place. It seems to me that if I were in the position of Ms Vanstone, for instance, I might take the position that I'm not interested in entering into an agreement.

I'm just wondering what the minister's response might be to such a decision by the Metropolitan Toronto board. I'm worried that he might — I don't want to ascribe anything to him that is unfair, but I think he might be tempted to say to the board, "If you don't enter into negotiations with us, there are certain other things we might change." For instance, as Mr Patten mentioned, there are special grants provided, even to negative grant boards, for specific things that might be eliminated. Or, heaven forbid, the government might be tempted to say to the boards, "Why don't you take over the employer share of teachers' superannuation?" I'm sure that wouldn't be proposed, but it is a possibility, and —

Mr Skarica: I hadn't thought of it, actually.

Mr Wildman: — that might coerce a board into entering into negotiations that it was not willing to enter into of its own accord. While I don't usually look for conspiracies everywhere, I think there might be an attempt by this government to coerce a board. While Mr Skarica says this is permissive, and while I admit the amendments are an attempt to improve it, I'm glad there's a sunset section in the amendments. I'm still worried about it.

Mr Patten: I didn't understand fully the way in which school boards would be assured that their funding would be for educational purposes. One way to assure the taxpayers that you avoid this dilemma in trying to find money from these boards is to require these boards to return a certain percentage of money to their own taxpayers that is equivalent to the requirements, what's considered to be a fair share, because the government of course is interested in seeing the tax cuts. That would be the neatest and cleanest way to do it.

I would be very sceptical. I can see the motivation for taking out "Minister of Finance" because immediately that says, "Here's money raised for educational purposes

going to the Minister of Finance," and there's no indication that I saw in the last budget that the finances to education were increasing; in fact they're diminishing. There would be every reason for the taxpayers of certain boards to say, "What assures you from your legal counsel that the boards that are affected under these provisions are not vulnerable to being sued by their own taxpayers?"

Mr Wildman: I might add that some of the parents from Toronto who appeared before the committee indicated that was one thing they were considering.

Mr Patten: Yes.

Mr Skarica: Part of the thinking in doing the amendments was that the way it was before, the Minister of Finance would almost certainly open up litigation because we are open to the criticism, "Well, you're collecting property taxes and now it's going for provincial purposes, ie, repairing highways and so on and so forth." So the amendments are to alleviate that, in fact protect boards because now they have some control over where those equalization payments are being spent by way of agreement and negotiation with the minister. I imagine they will get legal advice and whatever agreement they arrive at would have to be in contemplation of lawsuits and litigation from their ratepayers.

Mr Patten: But now there still remains a discrepancy in that you may say: "These negative grant boards will enter into an agreement for X amount of money." They go to the Ministry of Education for educational purposes and let's assume that could be satisfied, then what do you do when the intent of the exercise in the first place was to find \$400 million out of this budget year and you're going to be searching for another, let's say, \$80 million or something in that neighbourhood, how is that \$80 million to be made up to satisfy the requirements of the \$400 million?

Mr Skarica: It's not \$400 million because, as you know, it's about an \$180-million freeze on capital spending. So we're talking \$230 million.

Mr Patten: Two thirty-one, yes.

Mr Skarica: I know there's all kinds of different figures. I can't directly answer that question, but that's why it's left open for negotiation between the minister and the board, so that there's flexibility both for the government and the boards to recoup the moneys to satisfy our requirements and, at the same time, satisfy the concerns.

We heard at the hearings regarding taxation without representation. In fact, in Ottawa we heard that people there did not want to be taxed from their property base for provincial purposes. I really can't give you more of an answer on that at the present time.

Mr Patten: Okay. It would seem that the other boards would have to make up the difference if the Treasurer he wanted X amount of dollars from education and that would be exacerbated in a more pronounced manner in the 1997-98 fiscal year when that \$400 million becomes annualized to at least double the amount.

Mrs Julia Munro (Durham-York): Just to clarify the record, the comment was made by Mr Patten about no moneys to education, and I wanted to point out that \$40 million is going into technology in education and \$1,000 per student in co-op programs and matching funds by the government for contributions to colleges and universities.

Mr Wildman: That's \$40 million. There's a \$20-million increase over what was already budgeted by the previous government and it's after all of the other cuts. It's also stated in the budget that those are to be matched. So if a board cannot match it, they're not going to get the money from you.

Mr Trevor Pettit (Hamilton Mountain): Don't we put 20 in?

Interjections.

The Vice-Chair: Just a minute now. Are you finished, Mr Wildman?

Mr Wildman: Yes.

The Vice-Chair: Is there anyone else who wants to speak on these amendments?

Mr Patten: Yes, just on the date, which sounds risky. This is a very confident government. I would also suggest that can be used as a — let me try and find a friendly term, although I can't find one. In a sense it can be perceived as a threat by the negative grant boards because it places before them: "Listen, we're talking about a new ball game. In the meantime, you better play ball with us because the whole shooting match is going to be reorganized in any case." So we're talking about a whole new funding system, but there's a short-term requirement for some cash. Frankly, it still doesn't hang together financially. I'll do some more homework on it and share my discoveries with you, Mr Skarica.

1650

But it seems to me that it doesn't square financially that there will be a missing amount of money that will have to be made up, unless the Treasurer's prepared to back off and say, "We do not need as much money from education as we were looking for." If that's the case, then it hangs together. If it doesn't, then it still leaves the ministry hunting for the money that they have to get right out of education because this money's all right out of education. It's not to be circulated within. So if you have boards kicking into education, it still doesn't solve the requirements.

I will cease and desist for the moment, but I'll be interested in the financial machinations that are sure to occur.

Mr Skarica: You recall that during the hearings we heard from a number of boards that were not in the negative grant position that they were very concerned that the equalization payment provisions were an attempt by the government as a first step to encroach on their property tax base. The reason for the sunset provision is to assure those boards basically this isn't that attempt, that this is a stopgap measure really, the act is, until we get to education finance reform.

Mr Wildman: I accept Mr Skarica's explanation on the date. I think that's obviously what the government is attempting here.

But I think Mr Patten raises a good point with regard to the actual funds and how much is coming and where it's going. I guess you could argue, for instance, that the \$14.5 million that the government estimates small boards will get to try to alleviate the problems they might face because of the cuts might come from whatever the negative grant boards are contributing. Obviously it has been kept in education, but then what about the rest of it,

where does it go and how does it contribute to the overall goals the Minister of Finance has set for this ministry to meet in terms of savings?

If it stays in education, the question is, how does that contribute to savings? Unless it means it will be applied to some of the moneys — and this would be a book-keeping measure, I suppose — that are going to boards that receive grants, and so the Minister of Finance might even be giving less money directly to them than he's proposing now.

The Vice-Chair: Any further comment on these amendments? If not, we'll deal with them one at a time.

First of all, the one that deals with subsection 257.2(2). All those in favour of that amendment? Opposed? That's carried.

The next one is subsection 257.2(5). Any further discussion? All those in favour? Opposed? That's carried.

The next one is subsections 257.2(5.1) to (5.3). Any further discussion? All in favour?

Mr Wildman: Sorry. Are we going to deal with the question that's set off? I mean that's a bit weird.

The Vice-Chair: Is that the one that has that in there? Yes. Were you proposing any further amendments, Mr Skarica?

Mr Skarica: No.

Mr Patten: Because it offsets. Because if it is, it's — *Interjections.*

Mr Wildman: The term was always "offset." I don't want to be equivocal but —

The Vice-Chair: Legislative counsel, please.

Ms Marilyn Leitman: Setoff is a legal term used when someone owes —

Mr Wildman: That explains it.

Ms Leitman: — when two people owe each other money and they're trying to collect from each other and you set off the amounts against each other.

Mr Wildman: Okay, fine. I'll accept it.

The Vice-Chair: Any further discussion on that particular amendment? All in favour? Opposed? Carried.

Then 257.2(6): Any further discussion? All those in favour? Opposed? Carried.

Then the last one, 257.2(7): Any further discussion? All in favour? Carried unanimously.

Then we have two further amendments that are both out of order because they both state that section 9 of the bill be struck out so I'm ruling that they're out of order.

Mr Wildman: We'll just vote again.

The Vice-Chair: They're not even before you.

Any further discussion on section 9, as amended? Shall section 9, as amended, carry? No? All in favour? Opposed? Carried.

On section 10, there is an amendment which has been moved by the NDP that it be struck out, and I'm ruling that out of order as well, since it's contrary to the intent of section 10.

Mr Wildman: As you know, the reason for the amendment which you ruled out of order is that we oppose the section.

The Vice-Chair: I understand.

Mr Wildman: The reason we oppose the section is that we had representation, particularly from teachers' groups but also from boards, that indicated that teachers

do not abuse their sick leave and that the number of days they have is not out of line with many other groups, such as nurses and other professionals.

It appears that really what the government is after here is retirement gratuities rather than sick leave, and the question was raised a number of times about so-called unfunded liability of boards on retirement gratuity when we had some boards who raised that as a concern, but others said, "Well, we've been able to set off this by the fact that when a senior teacher retires and is replaced by a junior teacher or new teacher, the cost in the immediate number of years as the teacher moves through the grid is less to the board than the retirement gratuity."

So the saving in terms of salary cost is set off. For that reason, I oppose the section.

The Vice-Chair: Any further comments with respect to section 10?

Mr Skarica: I just have a couple of comments. Gratuities right now are subject to negotiation. We heard from the Roman Catholic board in Carleton where they don't have a gratuity, but virtually everywhere else it does exist. This doesn't remove it and it makes it subject to negotiation. There was some concern — I think all of us heard that most of it is an unfunded liability and now approaching up to \$10 billion.

As far as the 20 days, in the broader public sector sick time is not set out in legislation in any other area that we heard of. This basically makes the teacher legislation uniform with the broader public sector. Again it's a matter subject to negotiation.

1700

The Vice-Chair: Any further discussion on section 10 itself?

Mr Patten: Yes, I have another amendment.

The Vice-Chair: No, that's 10.1. We're just dealing with any discussion on section 10 as it's before us, as printed in the bill. Mr Patten, do you have any further comments? No? Shall section 10 carry? All those in favour of section 10 carrying? Opposed? Carried.

You have an amendment, 10.1, Mr Patten.

Mr Patten: I move that the bill be amended by adding the following section:

"10.1. The act is amended by adding the following section:

"Junior kindergarten teachers

"261.1(1) Despite any other provision of this act or the regulations, a person who has an approved certificate in early childhood education need not,

"(a) hold an Ontario teacher's certificate or a letter of standing; or

"(b) be a member of the Ontario College of Teachers, "to teach junior kindergarten.

"Same

"(2) The minister may make regulations specifying which certificates, diplomas or degrees are approved certificates in early childhood education for the purposes of subsection (1)."

This is not an easy one, because I know that the federations and a number of teachers are worried that the teachers who have certificates will lose their jobs. So this is not an easy amendment to make. However, I'm convinced that the only way some boards are going to be

able to maintain the program is by some sort of a mix. I know of some boards that have already begun to do this in any case, and I know that some of these are related to collective agreements, but it enables them to maintain a program by having perhaps fewer certified teachers for junior kindergarten along with those who have some kind of recognition as early childhood educators.

What it does do is protect the program, because it is less costly. It is in that light that I believe for certain boards this will be their only option. The women's federation, I believe, also suggested that this may be a recourse for them to protect junior kindergarten.

Mr Skarica: We call it the Peter Preston amendment.

Mr Preston: Peter Preston Liberal motion. This is what I've been saying —

Interjection: Repetitively.

The Vice-Chair: Are you in favour of the amendment?

Mr Preston: Yes, I am.

Mr Skarica: In principle, the government's in favour of this amendment as well.

There is a problem in the Day Nurseries Act. There's a ratio of one to eight for child care as opposed to the one-to-21 ratio right now for junior kindergarten. So in effect, if this amendment was passed at this time, it would be more expensive for the boards as opposed to less expensive. Given the reductions, I'm not sure they could afford that expense.

Again, this is something that's going to be contemplated in the future, but it is premature at this time.

Mrs Boyd: There's absolutely nothing in this amendment that then would put those children under the Day Nurseries Act as opposed to under the Education Act, so that is not the problem. Now, I'm not saying I wouldn't be in favour of doing that. Let me say that 21 four-year-olds to one person is nuts. That's not education. So that's a problem. But there certainly isn't anything in this amendment that would suddenly move those children under the Day Nurseries Act.

All we're saying is that under the Education Act these people would be recognized as being able to teach junior and senior kindergarten, and it would still be under the Education Act. So I don't think that's a problem. Now, it might be the thin edge of the wedge, and that might be what worries the government.

Mr Wildman: I understand the purpose of this amendment, and we did hear from FWTAO, the Federation of Women Teachers' Associations of Ontario, that they were prepared to negotiate or discuss with the government something like this. But I want to emphasize that they took the position that such individuals as might be touched by this amendment should be under the supervision of a certified teacher, a person with a teaching certificate, and I'm not sure the amendment says that.

Mr Preston: Subsection (2), "The minister may make the regulations specifying which certificates, diplomas or degrees are approved...." If he specifies that there has to be a certified teacher supervising the ECE, he can do that, can't he, under the section?

Mr Wildman: He could, but the question is, would he? I think the FWTAO's proposal was a reasonable one, and I wish the government would take them up on it.

They're saying, okay, you might have two junior kindergartens. There might be one teacher with a teaching certificate in charge of those two junior kindergartens and you could then have two of the individuals discussed in this amendment working under the supervision of that person in the program in those junior kindergartens and it might overall be less expensive than having two teachers with teaching certificates working in the two kindergartens.

I wish the government would take them up on that, but I'm afraid I'm not going to be able to support the amendment because it's not clear and I don't have the unqualified confidence in the minister that Mr Preston has.

Mrs Boyd: Or any minister.

Mr Wildman: Or any minister, yes. I'm not being —

Mr Preston: I do have one minor problem with this, and it's that it's in the negative, that the ECE "need not." Rather than saying what is needed to teach early childhood education, we're saying what's not needed, and that leaves it open, I believe. If indeed you didn't trust the minister, it would be wide open.

Mr Wildman: Yes, because then it's up to just the regulations.

Mr Preston: Yes. That's the only thing I have against it. In theory, in principle, this is what I've been talking about, as you know.

The Vice-Chair: You're starting to sound like the parliamentary assistant, Mr Preston.

Mr Preston: Well, yes. That's an "I agree with you, but..."

The Vice-Chair: He agrees with everything in principle too.

Mrs Boyd: That was my question. Is he suggesting an amendment to this? Because then we would definitely have to oppose it, because what you'd be saying then would be that the only people who could teach in junior and senior kindergarten would be people with an early childhood education thing, and I don't think you want to say that.

Mr Preston: No, what I'm saying is that this is possibly premature until we do the study and decide what is actually needed to teach.

Mr Wildman: The mythical study.

The Vice-Chair: That's a little bit different, yes.

Mr Wildman: I'm just pointing out that the study seems to be somewhat ephemeral.

Mr Skarica: I'm told there is something called a working group, and they're looking at the benefits of differentiated staffing at this time and will be reporting back to the minister.

The Vice-Chair: Any further amendment or any further discussion?

Mr Patten: Yes. Just to clarify, we did not see this as, "Kick out all the certified teachers and bring in less expensive early childhood educators." Not at all. That this

would enable early childhood educators to work as part of a team under the supervision of certified junior kindergarten teachers was the intent. So we see this as enabling, with the school boards having the responsibility for the nature of the staffing and what proportion and all this kind of thing.

The Acting Chair (Mr Michael Gravelle): Any further discussion? Ready for the vote on this amendment then?

All those in favour of this amendment? Opposed? The amendment fails, loses.

The next two amendments — I'll do one at a time. The next amendment has been deemed out of order.

Are there any comments on section 11?

Mr Wildman: As you can see from our out-of-order amendment, we are opposed to the section for the same reasons we explained we were opposed to the changes in the other sections related to junior kindergarten.

The Acting Chair: That seems clear. Mr Skarica, any comment?

Mr Skarica: I have no comment.

The Acting Chair: Any further discussion on section 11? Shall section 11 carry? I didn't hear any "nos." All those in favour of section 11 carrying? All those opposed? Section 11 carries.

Mr Wildman: You were right.

The Acting Chair: As it turns out.

The amendment for section 12 is also out of order. Is there any discussion on section 12? Comments? Shall section 12 carry? All those in favour? All those opposed? Section 12 carries.

Any discussion on section 13? Shall section 13 carry? All those in favour? Opposed? Section 13 carries.

Any discussion on section 14? Shall section 14 carry? Section 14 carries.

Shall the title carry? Any discussion on that question? All those in favour of the title carrying? The title carries.

Shall the bill, as amended, carry? Any discussion? All those in favour of the bill, as amended, carrying? All those opposed? Carried.

Shall the Chair report Bill 34, An Act to amend the Education Act, as amended, to the House? All those in favour? Opposed? Carried.

I think that's the end of our business today, ladies and gentlemen. The committee will adjourn. We obviously do not have a meeting tomorrow then. We've completed our business on Bill 34.

Mr Pettit: Mr Chair, I just want to commend you for the outstanding job you did as the Chair today.

The Acting Chair: It wasn't easy. It was very stressful. It was an onerous responsibility and I'm grateful for your support.

The committee stands adjourned to the call of the Chair.

The committee adjourned at 1713.

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**In attendance / présents*

Substitutions present / Membres remplaçants présents:

Miclash, Frank (Kenora L) for Mr Agostino

Bartolucci, Rick (Sudbury L) for Mr Gerretsen

Skarica, Toni (Wentworth North / -Nord PC) for Mr Jordan

Boyd, Marion (London Centre / -Centre ND) for Mr Laughren

Clerk / Greffière: Lynn Mellor

Staff / Personnel: Marilyn Leitman, legislative counsel

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Official Report of Debates (Hansard)

Monday 10 June 1996

Journal des débats (Hansard)

Lundi 10 juin 1996

**Standing committee on
social development**

**Comité permanent des
affaires sociales**

Children's services

Services à l'enfance



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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
SOCIAL DEVELOPMENTCOMITÉ PERMANENT DES
AFFAIRES SOCIALES

Monday 10 June 1996

Lundi 10 juin 1996

The committee met at 1541 in room 151.

CHILDREN'S SERVICES

Consideration of the designated matter pursuant to standing order 125 relating to the impact of the Conservative government funding cuts on children and children's services in the province of Ontario.

The Acting Chair (Mr Michael Gravelle): I'm going to call this committee to order. Good afternoon, everybody, and welcome to the continuation of our hearings under standing order 125 on the impact of the Conservative government's funding cuts on children and on children's services in the province of Ontario.

ONTARIO COALITION FOR
BETTER CHILD CARE

The Acting Chair: Our first presentation this afternoon is the Ontario Coalition for Better Child Care, Kerry McCuaig. Thank you very much for joining us. You will have 30 minutes for your presentation, which you can use in whatever manner you wish in terms of time. Whatever time is left over after your presentation we will divide equally between the three parties. Welcome, and feel free to proceed.

Ms Kerry McCuaig: I had hoped to have a larger delegation before you. I expect to be joined at some time, hopefully, during the next half-hour by three colleagues from Peterborough who wanted to talk to you specifically about difficulties they are having in their area. If I don't see them, maybe you could signal if they walk in the door.

I'd like to do two things. I'd like to give you a general overview of the state of child care since the government took office and then I'd like to talk to you specifically about the Peterborough situation, because I think it's an illustration of how market solutions to child care are insufficient to meet the demands, particularly the demands and the needs of vulnerable children.

In its July 21 economic statement, the Ontario government signalled its intention to review the province's early childhood education and care programs. Since that time, it has cancelled \$100 million in funding out of the province's \$560-million child care budget. In addition, parents and educators fear the demise of Ontario's 25-year-old junior kindergarten program. Twenty-four boards to date have announced that they will no longer carry the program, and government spokesmen have touted unregulated care as the arrangement of choice in the care of children.

No previous government has reduced funding for child care in the past. Responding to changing workforce participation rates by parents with young children, growing child poverty rates and the overwhelming research which indicates the benefits of quality programs for children, each consecutive Ontario government has increased its funding commitment to child care. In the past 15 years, the provincial child care budget increased from \$144 million in 1981 to \$560 million in 1994. Each new investment was aimed at enhancing the quality and accessibility to child care.

Since July, the government has taken a number of steps to reduce its involvement in the provision of early childhood education services. Those include the cancellation of the early childhood education pilot project; reduced funding to junior kindergarten; allowing boards to opt out of providing JK; reduction of Jobs Ontario child care subsidies; cancellation of financial support to child care centres already built in new schools; cancellation of planned child care centres in new schools; 10% cuts to family resource centres; elimination of the program development fund; cuts to programs which assist child care programs to integrate children with special needs; a review of wage grants and the capping of pay equity and subsequent reducing of staff salaries; and cancellation of the conversion program for commercial child care. In addition, provincial government cuts to social service agencies, school boards and post-secondary institutions have impacted on child care services.

These government actions are having an impact. A survey of municipal children's services departments completed by the coalition in February 1996 indicates that 4,743 of the 14,000 Jobs Ontario child care subsidies have been lost to date; more subsidies are scheduled to be dropped by the municipalities at the end of June, and additional spaces will be under review in September; 19 child care programs have closed; 12 regions have frozen their subsidy intake; 16 areas have increased their user fees to subsidized families; three areas have reduced or eliminated support to children with special needs; and 12 community-based planning groups have lost their funding. Meanwhile, 30,000 eligible families continue to wait for access to regulated, quality care.

A review of child care is currently under way and we await the findings. Government spokesmen have stated that the intention is to promote flexibility and efficiency. We concur that these are reasonable goals. However, when placed against the strategic directions strategy of the Ministry of Community and Social Services and past practice of the government around Bill 26, changes to the Labour Relations Act, employment standards, environmental legislation, housing and other vital legislation

protecting and enhancing Ontario citizens, there is cause for concern. The overall direction of these steps and statements made by government ministers reflects a preference for privatizing care and education programs for young children, reducing regulations and monitoring, and undermining the quality of care young children receive.

The province has indicated it's ready to spend \$40 million more a year over the next five years on child care. The federal government, as we read in today's reports by Canadian Press, indicates its child care employability tools will total — there's a correction there — \$240 million. How the money is spent is crucial. For child care proponents, it has never been a question of simply more money, but ensuring that money is spent in a manner to deliver high-quality programs and supports. This is critical, since research indicates that high-quality programs are of benefit to children, their families and societies, and poor child care arrangements are damaging and even dangerous for children.

If public dollars are used efficiently, they should produce a comprehensive social program which provides parental employment support, positive development for all children, income support for low-income families, a prevention program for children at risk and a developmental program for children with special needs. It should reduce the costs of other social programs and itself expand the economy by creating and supporting new jobs.

In order to produce this bang for the buck, public funding must produce good-quality care and education programs. Good child care isn't a mysterious formula. Extensive research shows it's high adult-child ratios, consistent caregivers, small group sizes, appropriately trained staff and an adequate physical environment. These results are most likely to be delivered where there is adequate public funding, regulations and enforcement, parental involvement and non-profit delivery.

Prior to April 1, 1996, the federal government was already spending \$100 million on the dependant care allowance to persons in federally sponsored training programs. It spent \$300 million on cost-sharing child care subsidies with the provinces for eligible families. Today, in the age of the Canada health and social transfer, the federal government plays no role in supporting the care of young children.

Provinces no longer have access to federal dollars under the Canada assistance plan, nor do they have access to the committed new dollars. In exchange, it would appear that the federal government's employability tool is an extension of the dependant care allowance. A babysitting voucher given to a parent in a job training program is not child care. It is an inefficient and poor use of public funding because it leaves children out of the equation. Child care is more than a program to warehouse children while their parents are otherwise occupied. We would hope the Premier would use the opportunity of the first ministers' conference to remind the federal government of its commitment to establish a national child care program offering high-quality accessible services.

1550

I'd like to refer you now to the program situation in Peterborough and Victoria counties. This is a microcosm

of what's going on in Ontario right now, particularly with children with special needs who are being integrated into mainstream child care programs. Peterborough and Victoria counties are quite interesting because they are a little snapshot of Ontario. It's an area made up of an urban, small-town and rural base, and the range of programs in the counties serve a whole number of families without regard for where they live.

Between 1992 and 1995, there was a 60% increase, from 183 to 328, in the number of children with special needs included in community care programs, and the amount of funding required to do this increased from about \$300,000 to \$429,000.

Previously, providing resource teachers in order to integrate children with special needs into mainstream child care programs was provided on an annual basis. It was a problem, because it did not provide for long-term solutions, and no program could make a commitment, when taking on a child with special needs, that they would be able to continue to take that child on. This was addressed in the fall of 1994 —

Hi. How nice to see you. I was just getting to the part of informing the committee about the situation in Peterborough with the care of special-needs children. I think it might be more appropriate if you picked up from here. Are you prepared to do it?

The Acting Chair: Would you introduce yourselves for the committee, please.

Ms Mary Lou Lummiss: My name is Mary Lou Lummiss. I'm the supervisor of a child care program that supports families and children with special needs — all families and children, actually.

Ms Sheila Olan McLean: My name is Sheila Olan McLean. I'm the coordinator of the day nurseries resource funding program in Peterborough, a program for enhanced staffing and child care programs when children with special needs are being included.

As soon as I get my papers out I'll be able to speak further. Sorry. We just sat for two hours on Highway 401, so I'm still in the pull-out-and-pass kind of mode.

The Acting Chair: That's where the Chair of this committee is too. He's in a traffic jam as well.

Ms McLean: It's a bad one.

The Acting Chair: May I remind you that we have about 20 minutes left in the presentation? Hopefully, you'll leave some time for questions as well.

Ms McLean: Basically, the situation with this enhanced staff program is that over the last six years since the program has developed, it's become very popular. There's a high level of satisfaction with parents and child care programs that this is really meeting child care program needs as well as parent needs. That being the case, our base budget was very quickly inadequate to meet the needs in our communities of the counties of Peterborough and Victoria.

For the last three years, between 30% and 50% of our funding has been fiscal funding. In the fall of 1994 our area office, realizing that our base budgets in enhanced staff programs were inadequate, decided to do a review and put more money into base budget. However, by the spring of 1994, before that increase happened, there was a freeze put on the area office, so they were unable to

increase any base budgets, for whatever reason. They continued to support the program through fiscal funding. That's one-time funding they could find from here and there and that wasn't nailed down for any particular reason.

That continued until January 1996, when the area office informed us that they have been prohibited from giving out any extra funding for fiscal or base funding purposes. We were informed a couple of weeks ago that this would continue, that we would receive no fiscal funding until after the child care review was completed and the area office had time to figure out what it would mean to their funding base.

Right now there is funding they were hoping to pull together to help us through the summer months. Child care programs have taken about a 50% cut in the amount of funding they were receiving for enhanced staffing, and they've been very creative in meeting that challenge. They've done a lot of fund-raising efforts. They've asked all parents in their child care programs to contribute to paying for enhanced staffing. They've really been creative and they've done it, but they cannot do it for the summer months, and there are a number of children in our communities who will not receive supported child care unless there is some funding.

We're not asking for extra funding to be put into the Peterborough area office so that we can meet these needs. This is money that's already there, but it's not allowed to be allocated. It's part of the \$600 million that this government says is being spent on child care, but it is being held back at this point.

Ms Merla McGill: I'm Merla McGill, a resource teacher with the Victoria County Association for Community Living. My position is to support families of children from birth to 12 years old. I came to speak on behalf of families that are affected by these cutbacks or this lack of funding to their children.

The day nursery resource funding program is vital to the families I support in that this is their only avenue of support for their children during the summer. It is important because without this program and without access to these funds, these children will have no summer program to maintain the consistency which the board of education would like to see so that these children don't regress and require more supports at school.

The impact we've seen — some families are near the breaking point as it is. Many have two workers in the family; mom and dad both work and they need care for their children. Private care is not available to them. Their special services at home funds do not cover enough hours to adequately support the child. Private babysitters don't work for them because these people need qualifications which many do not have unless they're willing to pay upwards of between \$10 and \$15 an hour. One parent said to me, "Without this, my alternative is to put my son in an institution," and we're all aware that that costs upwards of \$120,000 a year. I think offering this family to allow their child to stay at home and in his community is a small price to pay. That's just one family. There are many more facing the same kind of impact.

What it does to the family isn't pleasant. Many parents have expressed frustration, are at their wits' end and have

looked for supports in many other places. Sports programs and other programs for the summer aren't available to these children because they have to bring a one-on-one support person with them whom the parent has to pay for. That just isn't feasible for parents already paying child care for their other children. The child care provider will not take the child with special needs because they can't handle them. Not only is the consistency for the child lost when they return to school in September, everything they've gained or maintained during the summer is lost as well.

I don't have that much more to say other than that keeping the family together at home seems to be common sense. If that's what it takes to provide, then I think that's something this government needs to seriously take a look at.

Ms Lummiss: As a supervisor of a child care program I'm on the desperate front lines saying no to these families. That's very hard to do. For the last three years their high-special-needs children could come to our program or to any child care program that offers school-age care and this year, since the government has changed, they can't. They have trouble comprehending why. Does this government not see special-needs children in the same view as the other governments did? I try not to answer any political questions. I ask them to go to their local member of Parliament and ask those questions.

When you're sitting across from a parent who has trouble coping on weekends and you know that, and you see the tears in their eyes and the desperation in their voice, that's what brought us all here today.

1600

Mrs Janet Ecker (Durham West): Thank you very much for coming today and for putting up with the transportation hassles. As a commuter, you have my sympathies. I know what that can do to you.

I want to ask a little bit about some statements that were made at the beginning of the presentation by Kerry. I appreciate that you've acknowledged the fact that Ontario has had some difficulty because of the reductions and cutbacks in Ottawa with its transfers to Ontario, and we've all had some frustration trying to figure out what Lloyd Axworthy meant or didn't mean with his commitments.

You talked about cancelling \$100 million in funding of the province's \$560-million child care budget. I'm a little confused about that. Last year we were spending up to \$549 million; this year, up to next year, we're spending up to \$600 million. I'm a little confused how we've ended up losing \$100 million when we're spending more than what you're pointing out.

Some of the figures I've seen on sheets that your organization has distributed to people have talked about things that we were supposed to have eliminated. For example, we've got another document that has been circulated to child care organizations that says the resource centres, before our government, were getting \$19.5 million and that we are supposed to have cut \$2 million from that, but as I understand it we are currently spending \$20 million on resource centres.

I'm a little confused where the figures are coming from. They certainly do not match up with the figures

that are tabled publicly in the Legislature as part of the budget process.

Ms McCuaig: We got figures from both the organizations — to deal with the Ontario Association of Family Resource Programs specifically, their latest information was that in 1994 the government was spending something like \$17.5 million on MCSS-funded family resource programs; there are a number of other resource programs that aren't funded by the ministry. They have since taken a 5% cut and then a further 5% cut.

Suffice it to say, Janet, when we look at child care we look at it holistically, so when we talk about the \$100 million, there are going to be some cuts that you may not find line by line in your child care budget. For example, in the line items in the child care budget you don't see pay equity, yet for a child care program that's very much part of the funding that goes in. You won't see the cancellation of the early childhood education pilot project. That was never part of MCSS's budget; that was part of MET's budget, yet to us that was very much part of child care funding.

Mrs Ecker: If I understand you correctly, you're adding in cuts, in your view, that are not part of MCSS, but at the same time, when you're talking about what the government is spending on child care, you don't wish to take our figure.

Ms McCuaig: As you say, you thought you were spending \$549 million.

Mrs Ecker: Comsoc is spending — it was up to \$549 million; it's now \$600 million. Even if we take your view that you are talking about reductions in other programs —

Ms McCuaig: Not just in other programs. That's why we're talking about \$560 million rather than \$549 million, because it takes into consideration funding which was coming from other sources than MCSS. What's not covered in it at all, for example, is funding to junior kindergarten, which is a major early childhood education program that has suffered tremendous cuts, yet we have dealt with that separately.

I think you will have to agree that some of these funding cuts came from the MCSS budget for child care on line items that neither you nor I would dispute. That was money being spent on an annualized basis for child care which isn't being spent now. We're not disputing that you're committed to putting in \$40 million more a year; we're wondering why you're not acknowledging the money that's come out. For example, when the program development fund was eliminated in November, with it went programs like the one that's been talked about in Peterborough and other programs like that across the province, but I've yet to see your government acknowledge that those cuts have been made.

Mrs Ecker: We've certainly reduced programs that deliberately tried to wipe out one sector of child care in favour of another, like the conversion program. I don't make any apologies for that because that program did not create one more new space or one more new subsidy. That's a cut I do not apologize for at all.

Mr Rick Bartolucci (Sudbury): Unlike Mrs Ecker, I don't want to waste my time on statistics.

Mrs Ecker: They're called facts.

Mr Bartolucci: I'd like to deal with the important realities of children, children's needs and the lack of availability to meet the needs of these children. The reduction in funding has taken place; there's no question about that. There is a freeze on base funding; there's no question about that. Can you answer the question, maybe Merla, because you work so directly with it: What effect does that have first of all on children, on parents, and what is the importance or necessity of parents to have these services available to them so that their children's futures can be enhanced? Would you like to address that in a very general way? We only have five minutes.

Ms Lummiss: It's Mary Lou speaking. In my program I've had to say no to three children and their families. These children need one on one in the school system, and we cannot say, "Yes, they can come into our program," because we can't deal with them. That has devastated their families. One is a working parent, one has a baby at home and a younger child and knows that all summer long with this child, who's abusive and needs direct one-on-one care, she does not know how she's going to cope. She tried her hardest to get here today.

For the staff in our program who have worked with this child since he was about four — we feel that we're letting the family and him down because we can no longer offer the service because we cannot get the funding to service the family and hire the staff that's necessary.

Mr Bartolucci: Thank you very much. Just to quote a line from Mrs Ecker, that is fact. Would you like to outline very particularly and very directly what happens to essential services to the community at large and to these families when they have no recourse or no hope? How does that impact on those three areas?

Ms McGill: If I can address that: Many families will have to turn to institutionalized care for their children, probably the worst, but it seems this government is only looking at that as an option for people. Whether they realize they've taken away such a vital program I don't know, but I think it needs to be put back in place. I also feel that the stresses on families and couples, husbands and wives and siblings — these siblings are so concerned for their brothers or sisters, as we all are. It was a big mistake; it's time to correct it.

Mr Bartolucci: A final question, and it's a rhetorical question, but I ask for either a yes or no: Do you really believe you'll be doing better for less with these children?

Ms McGill: No.

Mr Bartolucci: Thank you.

Mrs Sandra Pupatello (Windsor-Sandwich): The government has constantly acknowledged or they say there is a need to address some area of child care as it relates to jobs. Over the course of this year, since the government has taken office, what do you think has happened with the families you deal with in terms of improved access to jobs or job opportunity because of what they're doing in the child care area? Could any of you address that?

Ms McCuaig: Just looking at the Peterborough situation alone, when we talk about jobs, 43 children in 19 programs now do not have child care. That has a big

impact on their parents' ability to access employment. I want to emphasize that this is a prime example of why putting money into parents' pockets and saying, "Go out and buy your child care," doesn't work. These are parents that you could put all the money in the world into their pockets and they would not be able to find people — the lady down the street is not going to look after these kids. These kids need expert care not only for their own safety but for their development.

1610

I would refer you to the letter from the paediatrician in the Peterborough area which references three children particularly. If we have to put names to these kids, let's do it. There are real impacts to the developmental needs and wellbeing of these kids because they do not have access to child care programs. In addition, we've lost 13 jobs; these are trained specialists working with special-needs kids who now don't have jobs. You know, so much for job creation.

The Acting Chair: Thank you. Third party, Ms Boyd.
Mrs Marion Boyd (London Centre): Thank you very much for coming. I know it's hard to get in to do this, but it's very important for us to hear from people who are actually delivering services out in the field and what actually is happening, because those are the facts that really count and that's what we need to be looking at.

I'm really quite struck by the importance of your presentation to the whole topic we're looking at, which is the impact of the kinds of decisions the government is doing. You've given us a very graphic example of the kind of domino effect, that if you take money out of this area and you don't examine what the impacts are, then you have to spend money in three, four, five or six different areas and in fact there's no saving at all. That's exactly what the story is that you're telling us in terms of families that have special-needs children.

Would you like to give me any kind of sense — have you had any kinds of questions from the ministry at all about what that domino effect is for the families, or has this been your only opportunity to really get across the seriousness of what you've experienced?

Ms Lummiss: If I could just speak quickly to that. A parent really wanted to be here today to tell you because their local member of Parliament is a very busy person apparently and does not have time to return phone calls or answer letters. We were given a form letter and this form letter talks about the \$600 million, it talks about the cutting of the conversion program and not once does it mention her need as a parent, what desperation she's in and what she's going to do with her special-needs child in the summer. Even her name was spelled wrong.

That told her that this member of Parliament, while he is very busy, was not able to address her need and so is not paying attention. I think the desperation she's feeling is that no one will pay attention and I said, "Well, we're going to go to Queen's Park to let people listen because they need to."

Mrs Boyd: One of the things that strikes me is that whenever the parliamentary assistant talks about child care reform, she talks about the need to find flexibility, and yet when you talk about the way your program worked, the flexibility that was available to area offices

to really look at the way in which these very important programs could be delivered most effectively in their local area you say has disappeared.

It really feels as though we're being told, on the one hand, we have to reform in order to achieve flexibility but, on the other hand, are taking away the flexibility that was there that was actually delivering programs and in fact delivering programs in an integrated kind of a model with other agencies like the community living association. All of the instruction has been: "Try to integrate. Try to get a continuum. Try to do all this sort of thing." It sounds to me as though you've done that and, as a result, 43 children don't have care and 13 people have lost their jobs.

Ms McLean: I think the most unfortunate part is that there hasn't been a cut. This is not a cut that someone has said, "This kind of a service isn't needed and therefore we're going to cut." It hasn't been that we were caught in a certain funding tunnel and that was cut. This funding has not been cut. This funding is frozen at the area office and the area office has lost its discretion to allocate that funding. It's still there, but they can't use it.

Mrs Boyd: They can't release it. One of the issues that we've been looking at is the really highly magnified impact of all of these changes to disabled people, and you've certainly given us a really good example of that for these people sort of at a particular age. But one of you — I think it was you, I can't remember — talked about what this means to the future of these children and to the costs in the education system; the medical system; the social service system in terms of their parents; the legal system, because we know the stresses this places on families and so on. It sounds to me as though the freezing of those dollars is going to cost us all a great deal in the long run.

Ms McCuaig: I think it's worth adding that these Peterborough programs have been doing what they've been advised to do, and that is, from January to May they try to run those programs on fund-raising and going to the private sector in addition to offering the service, and trying to make up for \$429,000 which wasn't there to run it. That is again an example; that sort of community generosity is not sustainable, and the fact that these parents are now stuck during the summer months without care and without knowing what their chance for future care is, is an indication that this laissez-faire view to allowing the community to find its own solution without supports is a non-starter.

Just to reference that Peterborough is not alone, we have families here from Sault Ste Marie who would very much like to have come down and talked to you. We have families from Hearst, we have families from Kitchener, all who are experiencing similar problems with programs, who've had to say to families with children with special needs, "We're sorry, we cannot sustain your child in this program any longer."

The Acting Chair: Thank you very much. Our time has expired.

Mrs Papatello: On a point of order, Mr Chair: You referred to a letter during your presentation. I wonder if you wouldn't mind tabling the letter for the committee.

Mr Trevor Pettit (Hamilton Mountain): Is that a point of order, Mr Chair?

The Acting Chair: Apparently it's appropriate to ask if it's tabled, and if they wish to table it — if you wish to let the letter be —

Interjection.

The Acting Chair: As long as it's okay with you, apparently it's appropriate for the committee to accept that.

Thank you very much for your presentation. It was much appreciated and I'm glad you all managed to get here in time to be a part of it.

FAMILY DAY CARE SERVICES

The Acting Chair: We'll move to our next presentation, Family Day Care Services, Ms Maria de Wit, the executive director, and Mr Bob Hollingshead, the board president, if you would come forward. Good afternoon and welcome. You have 30 minutes for your presentation, which you can use in any way you wish. Whatever time is left over after your formal presentation we'll divide equally among the three parties for questions, and the questioning will begin with the official opposition. Thank you. If you can introduce yourselves; we know who you are, but welcome, and feel free to proceed.

Ms Maria de Wit: I'm obviously Maria de Wit and this is obviously Bob.

Family Day is a non-profit charitable organization which has been in the business of providing children's services since 1849. We were originally known as the Protestant Children's Homes. We operated orphanages which were phased out in 1930 and then the agency's priority shifted to foster care. In 1964, with financial assistance from the United Way, we undertook a pilot study on home-based child care in partnership with St Christopher House and Victoria Day Care Services. This is the model that was later included in the Day Nurseries Act as a regulated program, now commonly referred to as licensed home child care. Family Day then shifted its priority to the delivery of home-based child care programs.

Why are we talking to you today? We represent an agency providing direct delivery of child care, both centre-based and home-based. We are an approved corporation, and we provide child care consulting service to corporations across Canada.

Our programs are available in the greater Toronto area, Metro, Peel and York regions. We operate 16 child care centres — the majority are located in schools — serving 1,000 children and four home child care programs. In Metro we have 180 caregivers and 500 children; in Peel we have 300 caregivers and 950 children; and in the York region we have 80 caregivers and 225 children. Our annual operating budget is \$20 million, and we employ 260 staff.

Licensed home child care is the best-kept secret in Canada and Ontario. It's a program whereby independent, self-employed caregivers link with a licensed child care agency, which provides training and support and access to program resources. It's an affordable, quality model of child care for children of all ages, but particularly

younger children who thrive in the home setting; and many families prefer it for siblings and after-school care.

1620

Children all over the province are feeling the impact of recent funding cuts to social service, child care, municipalities and education.

The reduction in welfare benefits has had the greatest impact on children and families. We now have a record number of children in Canada living below the poverty line. Cuts to welfare have put more children in the vulnerable category. Any family trying to minimize their dependency on government's assistance by attending an educational institution or job retraining were also impacted by the Jobs Ontario subsidy funding change from 100% to 80% depending on the municipality's willingness to pay the 20%.

Family Day is an approved corporation under the Day Nurseries Act. This means that we administer child care fee assistance directly on behalf of the provincial government. Since we do not have a tax base to collect the 20% as a municipal contribution, the agency commonly charges the parents using our service to 20% and fundraisers.

Before we considered this for families and Jobs Ontario subsidy, we undertook a detailed review, since we knew all the families were in receipt of full or partial social assistance and were poor. We found that the average gross family income was \$1,350 a month, and this was before the 21.6% rollback on welfare payments. Many families were paying over 50% of their income towards housing, so their ability to pay for child care was limited. Family Day was unable to underwrite the fees for all families, but our board did decide to underwrite the fees for all infants and toddlers by \$3 a day.

The provincial government has not taken any direct cuts to child care subsidies, although there is severe anxiety because of the decreased federal funding transfers and its impact on future funding. However, the funding cutbacks to municipalities has impacted child care subsidies in many municipalities. In Metro Toronto where there was no saving in welfare payments, the Jobs Ontario were all at risk until temporary funding relief was provided by the federal government, safeguarding the spaces until December 1996. Frankly, this means that as of September they're probably going to stop admitting subsidized children. In both the Peel and York regions, the municipalities only approved funding for some of the spaces, restricting access to fee assistance.

The Conservative government has stated many times its commitment to levelling the funding playing field between the commercial and non-profit sectors of child care. Mrs Janet Ecker chairs the child care review committee that is to report soon on this and other child care matters.

The inequity in funding occurred when the Liberal government introduced the direct operating grants. Non-profit organizations received 100% and independent and commercial organizations received 50%. This funding was increased for the non-profit sector in response to provincial pay equity legislation.

Prior to the introduction of the direct operating grants, the cost of child care for families in need of subsidy was

through the fee assistance program. The introduction of the direct operating grants was restricted to salaries, benefits and provider payments, resulting in a double stream of funding: subsidy and grants. The grant benefits all users of the licensed child care system, fee paying or fee assisted. It's important to note here that fee-assisted families also make a significant financial contribution to the cost of child care since the cost is shared by the federal/provincial/municipal governments and parents.

Family Day is an excellent service provider, and our ability to do so was greatly enhanced by the wage subsidy funding. It resulted in our ability to pay decent wages and benefits and to increase provider payments. It has meant that the turnover of staff and providers has decreased significantly. One of the indicators of quality is staff retention. It has kept our fees affordable for low- and middle-income families who do not qualify for child care fee assistance. Our current salary scale, including all grants for ECE teachers, is \$30,000 to \$33,000. The provider payments are \$23 a day.

We're committed to quality care for all children in Ontario, and agree that inequities need to be fixed. Any change in child care funding needs to be well planned and will need an appropriate time frame for implementation.

The change in family compositions and labour force participation means that young children do not have a parent at home to look after them. We believe that the \$525 million — it may be \$549 million, going to \$600 million — is money well spent on child care. It's a wise investment.

We agreed with the government's decision to cancel the conversion funding but question the freezing of the program development fund. We never agreed with the use of the program development fund as a bailout fund, but did think it was appropriate for minor capital to deal with health and safety issues and it gave the area office some flexibility to respond to local community needs.

The deletion of capital, minor capital and startup funding for child care centres located in schools has had an unfortunate impact on new communities. Family Day believes that most families prefer the school as a location for their child care programs. The majority of our centres are located in schools and the partnership between the schools and the centre helps families cope with the stress of work and family life.

We find that the cuts to education affect us in two ways: in service delivery and in the cost of shared school space.

In the Peel region the board has decided to eliminate junior kindergarten and at the same time is looking for ways to increase its revenue. Family Day operates five child care centres in Peel. The child care centres were not financially viable using the centre-based space for 40 pre-school children and were licensed to serve 70 children; 40 in the centre and 30 school-aged in alternate school space. The agency pays \$5.45 a square foot for operating costs and now pays \$800 a year for the alternate space.

Prior to the cancellation of child care centres in new schools, the board perceived the child care centre more as a partner, which now, due to the budget cutbacks and the perception of no government commitment to child care in

schools, is altering to a tenant relationship. This means that for the summer of 1996, we have told we will be billed \$20 per hour for an on-site board caretaker.

In the York region, junior kindergarten was eliminated and the school board decided that each school could decide whether kindergarten will be half-days or alternate full days. The school board promoted all-day alternate kindergarten as lunchtime busing was eliminated. Parents were allowed to vote, but a requirement was if you voted for half-day, there had to be a plan that enabled all community children to attend without busing paid for by the board. In many cases, working parents' only solution is the additional cost of busing offered by a day care centre, if they're that fortunate, or taxis.

The introduction of alternate kindergarten days and its match to child care does not sound problematic until you consider professional development days, spring and Christmas breaks and a summer program when all the children are in attendance. Relate that to the cost for alternate space, a must to serve all the children, and there are significant costs that impact both parent fees and subsidy rates.

What are our recommendations? Retain the Day Nurseries Act standards for home-based and centre-based care; retain the current funding portfolio; introduce a three-year funding cycle — we had that once and I have to tell you, every single day care operated much more efficiently; level the playing field by increasing the wage grants to independent operators; and streamline fee assistance by introducing income testing.

Thank you for listening.

The Acting Chair: Thank you very much.

Ms de Wit: I tried to do it quickly.

The Acting Chair: Mr Hollingshead, you wanted to say something?

Mr Bob Hollingshead: Just that I am the president of the board. It's a volunteer board. In my day life I'm a partner at Price, Waterhouse, but I'll be pleased to answer any questions from the board's perspective or as a taxpayer, for that matter. Maria and I are both pleased to be here.

The Acting Chair: We have about five and a half minutes remaining per party for questions. We begin with the official opposition.

Mr Bartolucci: Maybe we'll ask a financial question to the financial person. One of the suggestions — I think it was a wise one because it was a Liberal government recommendations several years ago — is that we have a three-year funding cycle and, Maria, you alluded to the fact that it was good. Now, Bob, from a financial point of view and from a practical business point of view, could you outline why that three-year funding model is an excellent model?

Mr Hollingshead: From my perspective it introduces an element of stability in that you can plan with a little longer cycle in mind. With the constant uncertainties of what might be coming down the pipe in the next budget, it takes away flexibility; it takes away any concept of long-term planning and program development. The uncertainty is very tough on all of us. It's the fear of death by a thousand cuts. What's coming next? I think it's critical in any fiscal situation to have a longer-term

view, and a three-year cycle would certainly introduce that.

1630

Mr Pupatello: I'd like to ask you as a taxpayer your opinion of government-sponsored programs like child care programs and in particular the view that the money that government spends on child care as an investment for communities at large in terms of the early childhood education that is attached to child care in all cases. How do you feel as a taxpayer and as a representative of corporations, for example, that government uses your money in this way and that it should continue to do so?

Mr Hollingshead: My first comment there would be that I don't envy anyone sitting out there who has to make these decisions. Having said that, we had quite a debate when Mr Harris was elected from the perspective that, as a taxpayer, I thought the stance or the move to more fiscal responsibility was long overdue. We had to face up to it now rather than later. Then it becomes a question of, where do you cut?

One of the things I've learned in my 10 years on the board is that very issue you're talking about, the importance of early childhood development and making an investment today to save on the crime spree down the road. The empirical evidence in the US and elsewhere that supports this has been very, very strong. That's why, as a taxpayer and as a director, I believe so strongly in quality child care. It's a wise investment. It's pay now or pay big time later.

Mr Gerard Kennedy (York South): Thank you for your report. I just want to touch on an area that wasn't addressed directly in the report but it was in one of the responses about the uncertainty that exists out there in terms of the pay equity payments that are gone for staff and the increased fees for low-income families in some of the municipalities you serve. I wonder if you could address those. In particular, what kind of difficulties that has raised, if any, and also what areas are you most concerned about in terms of the changes that are contemplated and may take place yet?

Ms de Wit: I have a whole lot of answers to that. The first thing is that I've been an advocate and I think I've been on every child care forum since the Premier was named Davis, so I get an incredible number of phone calls from anybody and everybody about "What is it you're not telling us?" and I have to tell them I don't know anything.

The fear has to do firstly with, are our salaries going back to what it was like when I was a child care worker?, which meant that I subsidized every parent who used child care. So the big fear is, what's going to happen to the grants? That's from a staff perspective.

All our directors and all our parents in our centres are very aware that if the grant or part of that salary was to continue, there would be huge fee increases. Most of them are now struggling with even retaining their current salaries. We're getting more and more pushes for extended hours of service because employers expect everybody to work longer, and parents are really shocked when you sit down with them and work out what the cost for that is. I think the big fear is, as frankly I've always said to previous governments and to this one, that child

care funding feels like a house of cards. You pull the wrong card and the whole thing will crumble in around your ears.

I also just want to add that one of the things I feel very strongly about is that we manage taxpayers' money. I'm one of them; Bob's one of them. We manage it wisely. We provide an incredible amount of service for little money. You don't have to be an entrepreneur to do efficient, quality child care. Many of us who are non-profit operators get very offended by the sort of wording that implies that if you're non-profit or charity, obviously you waste your money.

My sense is that there's just a lot of uncertainty because it's been going on. I tell people we have so far retained the child care portfolio. "We have seen no cuts. Are you getting your paycheque? Are your centres still functioning? Are the children enrolled?" We just have to live with the current reality of uncertainty.

Mrs Boyd: Thank you for coming and thank you for your presentation. You say the centres are still open and the providers are still employed. Is that true? You haven't lost any parents as a result of the kinds of changes and you haven't lost any capability of providing care?

Ms de Wit: Our board has been fund-raising a hell of a lot harder than they ever used to, so we've had no fee increases for infants and toddlers. We did increase, for the first time in two years, our preschool, which has gone to \$630 a month. We've retained the rates in home child care, and we've undertaken a huge marketing campaign because we do know we are going to have a hit. So far we have had a little rollback as an agency in subsidy enrolments. We have been able to replace them with full-fee because of marketing.

Are we unique? The answer to that is yes. One thing we've learned is that there's an economy of scale for our organization that enables us to do things that a stand-alone centre is unable to do. The board keeps asking me, "What can I do to help the community as a whole?" and I say, "The minute my shoulders aren't up," like I find I'm doing now, "we should give some thought to how we can support community programs." Our own centres are fine, but I think it's partially economy of scale.

Mrs Boyd: That's indeed very helpful.

The kind of care that your organization offers in fact offers the kind of flexibility to parents that we certainly heard in all the child care consultations a lot of parents are looking for. Can you tell us, in terms of the continuum of what parents' needs are, whether it's really feasible, for the kinds of suggestions around the removal of regulation in terms of licensed child care, to maintain the quality you now provide and the quality that has been the goal of the child care industry, whether it's commercial or not, over many years? What are your concerns around that?

Ms de Wit: I think centre-based care has always been better understood, so people insist that there be licences, there be standards, there be inspections. I get very anxious about home child care. I think it is provided 99% by women who are very committed to the programs they do, who need supports to say they can do it independently and alone and keep the quality. When we insist there be standards in group centres, where people are in and

out all the time, and there be inspections, to then suggest that home child care can be provided by someone alone in their home without supports — that's my biggest concern. I think quality care for children means that you also support the workers who work with them, whether it's an independent, self-employed caregiver or a staff in a day care centre.

Mrs Boyd: So you would be offended if people compared your kind of child care, even though it is home-based, to the lady up the street looking after your kids for a few hours, which has been suggested as a model by some members of this government. I think for most people who work in the child care field, that is seen as really not an understanding of the educational impact and the care and support impact of the kinds of programs we now have.

Ms de Wit: I'd be offended unless you describe the woman who can do it independently very well, and I can give you a few.

Mr Hollingshead: From the director's concern, when we recruit new directors one of their first questions — and if they don't ask it, I suggest that they do — is from a legal liability perspective: How do we know that there is quality care being given by our providers? The regulated form is obviously one of the areas from which we draw comfort, but the prospect of parents having to turn their children loose in a totally unregulated environment because that's the only way they can afford it — I'd be frightened at that prospect.

Mrs Julia Munro (Durham-York): Just picking up on the last question when you talk about the unregulated, I just wonder if you can tell us, how many children are covered by organized or licensed child care as opposed to the informal sector?

Ms de Wit: You mean in home child care, or total?

Mrs Munro: In total.

Ms de Wit: I would say roughly 80,000, but I could be off. The numbers never seem to agree when you ask the ministry. Sorry. There's not a good data system.

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Mrs Munro: My question was in terms of percentage, just to have a sense of —

Ms de Wit: If you only count — and this is where we separate from our European partners — child care and not junior kindergarten and kindergarten, then we probably have 11% to 12% of the total child population covered. It's not necessarily an indicator of need for child care. You then have to take into account labour force participation etc. But certainly we don't cover the majority of children and families.

Mrs Munro: Right. In your presentation, on page 3, you referred to York region's junior kindergarten being eliminated. How many schools were running programs?

Ms de Wit: About 50.

Mrs Munro: Out of?

Ms de Wit: Sorry; I remember the ones that were eliminated. I think they had about a third and were planning to go to two thirds in the fall of 1996, which was then cancelled.

Mrs Munro: The last question: On page 4, when you talk about the alternate kindergarten days and the match to child care and then, in the rest of the sentence, "until

you consider professional development days, spring" etc, what happens now with those days?

Ms de Wit: Right now, alternate child care will mean that two children will share one space. I don't have a problem right now. When they're going to kindergarten half-days they're with us the rest of the time; we're not able to enrol a second child. For it to be financially viable to have them three days one week and two days the other — it's the intent of all the child care organizations I've talked to that we will provide that. There are examples in Durham that do that. But you're now serving two children. You run into a problem on a PD day, because now both children are there. The parents are still working. I'm still only licensed for 24 kindergarten children. Suddenly, I'll have 48.

On PD days, as long as it isn't a hard winter, we say, "Gee, we're going to take lots of field trips." We had to do two weeks of field trips in Peel region because we couldn't access the school. The parents said the program was great. The kids were exhausted and miserable: "Let's not ever do that again." We're certainly not doing that in the summer. When you think about alternate kindergarten where the children are five, field trips for a week are not going to work. That's going to be the challenge.

Mrs Ecker: Our colleague across the way talks about uncertainty in the field. With the misinformation that is continually put out, I can understand why people are very concerned. For example, we have not scrapped pay equity; it is not gone. We are not proposing a model of friends and neighbours down the street to replace the regulated sector. I certainly would agree with your presentation that regulated home care is probably one of the undiscovered sectors of child care out there. One of the things I've found of concern is why so few parents, even when they can have the choice in a community between regulated home care and non-regulated home care, choose non-regulated home care. It's not cost in many communities that causes them to do that. It's certainly something I have found to be of some concern.

One of the issues you have raised here is the inequity of the wage subsidy grants as they've gone into the system, and it's not only between private sector and non-profit, because there are many non-profit centres and whatever that don't get the wage subsidy for various reasons. Why is it that they've been able to survive, those that are not getting it, when some that are in the non-profit do get it? Is it because they are part of organizations that have the economies of scale, as you talk about? Any insight into why that is the case?

Ms de Wit: The reason I have hundreds of applications for employment is that people are working in other places for less money and there is more turnover. If you really look at turnover as an indicator of quality, you're going to find that you can manage. If suddenly the government cut it from Family Day, I can assure you we're not going to be bankrupt and out of business, but we'll go right back to having all kinds of turnover etc of staff, which isn't good for children. Added to that, someone phoned me and said, "If everybody gets cut it happens to everybody at the same time." Then I get really offended, having been one of the people who ran a large non-profit parent cooperative at \$5,500 a year when

everybody else around me made \$15,000. It then says the government does not value people who work with young children, and as far as I'm concerned, the most critical years are young children.

If I can add to your comment about people choosing unregulated caregivers, partially, when you look at the national child care study, you find a lot of the unregulated child care is family, some sense of family. It could be my cousin, it could be my sister — it isn't just strangers in communities — and often there is an arrangement that, "I will do it for you, because you're my cousin, at a lower rate than I would do it for anybody else."

Having said that, there are also lots of caregivers who are independently running good programs, market themselves well, get paid top dollar, but they are in communities where they're not dependent on subsidies. An example for Family Day is that we always had caregivers at Yonge and Eglinton and they were able to get children directly at higher rates. We had trained them, and even though my child care coordinators were very upset, I said, "Look at it as community service." They're now doing it independently on their own, the kids are getting good care, but we trained them, we supported them and they know what they're doing. That can happen.

The Acting Chair: Our time has expired. Thanks very much for your presentation and your time. It's much appreciated.

Before moving to our next presentation, I just want to tell the committee members that there was an opening in tomorrow's schedule at 4:30. It now has been scheduled for the Indian friendship centre to make a presentation, so there will be all three spots tomorrow.

DAILY BREAD FOOD BANK

The Acting Chair: If I can call forward our next presenter, it's the Daily Bread Food Bank, Ms Sue Cox, the executive director, and Dr Winston Husbands, the research coordinator. Thank you very much for joining us.

Ms Sue Cox: Thank you very much for having me here. I appreciate the opportunity to talk to you about child hunger and what's been going on over the last six months in the greater Toronto area, where we're seeing more and more children in more and more difficulty.

I'd like to give you a little context of what Daily Bread is. For those of you who might not know, we're the largest food bank in Canada and we're the central supplier of food and information and all kinds of things to about 200 food programs in the greater Toronto area. We also conduct intensive research with the people who use those food programs to try and find out more about why people need food relief, what are the causes of hunger and perhaps some of the solutions to that.

I'm here today to say, unfortunately, that hunger is growing quite rapidly and it's growing among children in the greater Toronto area faster than it is among any other population group. Compared to previous years, kids now constitute a larger proportion of the people benefiting from food relief, and the hardship they suffer is really quite great, greater than I can recall seeing before.

The report I'm going to speak about today is based on our spring survey of food bank users, which was coordinated by Dr Husbands. In the survey we go out and anonymously interview about 900 food bank households randomly chosen. We gather a lot of data from them. It's the information that they have given us and what we also see happening in the service statistics of our member agencies that constitute the base of this report.

It's quite clear in looking at the results of the February and March survey that there is a direct relation between increasing hunger in the greater Toronto area and the recent cuts to social assistance. People have less money obviously. They have less disposable income. They have less money to buy food. They go without more often. They have less ability to deal with emergencies they face.

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There are currently about 154,000 people, or slightly more actually. There were 154,000 people in March of this year using food banks in the greater Toronto area. By now the number has risen closer to 160,000 people using food relief programs in the GTA every month. Where once, until recently, 43% of all the food bank recipients were children, that percentage has now risen to 46%. That accounts for about 71,000 kids in the GTA living in families who turn to a food bank for help. It's a 65% increase from a year before. Because children are only a quarter of the general population, the high incidence in food banks is obviously quite significant and points to the significantly increased risk they take of being in need.

I included in my report a chart that takes a look at the growth in numbers of children using food banks over the last several years, partly because it indicates the various factors that lead to people needing food banks.

In the late 1980s we had gradual increases in numbers of people using food banks and children using food banks, primarily because of a high rent situation in the GTA and the high percentage of people's incomes that had to go to rent. When there was some relief in the welfare rates and people were given some more money in 1990, there was actually a brief decrease in children using food banks, quite a significant one really, and children who were on welfare and lived in low-income households. Unfortunately, it didn't last very long because the recession started to move the numbers up and so you see them rising through the early 1990s. But when the employment situation starts to improve, you see the numbers coming down again, and last summer they were the lowest we had seen for a long time, until October.

The complete increase in food bank use is actually a direct result of the cuts to social assistance payments, and that's true of course of all food bank recipients, not just children. Three quarters of the children in food bank households live in families that are on social assistance. Other people have jobs — they're low-wage earners, they have income from a variety of other sources — but primarily you see people in a situation where they're either on family benefits, mother's allowance or general welfare.

We also noticed that the percentage of single-parent households has actually increased recently, probably primarily as a result of their lack of access to any jobs that have come along. I remember in the late 1980s

single-parent households were about 65% of all the food bank households with children. At the height of the recession it was pretty well a 50-50 split. You could as easily have been in a two-parent family as a single-parent family, but now we're seeing lone-parent families increasing. Although the single-parent families are obviously at far greater risk of needing a food bank, the actual situation for two-parent families is considerably worse. They have less access to a variety of things. I'll talk a little bit about that in a little while.

It's worth pointing out, though, at this point that the food bank families we're seeing are already taking incredible steps in trying to cope with the situation they're in. They're doing all the things they've been told to do. They're buying dented cans, they're buying on special, they're buying in large quantities, they're using coupons, they're cooking in bulk. They're taking all kinds of measures to try and cope with their situation. Thirty per cent of them don't have a telephone any more, they're not using public transit as much and, I think most disturbingly, almost half of them have actually built in not buying as much food and going without meals as part of their coping mechanism.

About 82% of all the food bank recipients who are affected by social assistance cuts report to us that they've turned to food banks more often as a result. I don't suppose we're surprised about that. But food banks themselves are in a very tight circumstance right now. Whereas donations have increased, they haven't increased nearly enough to make up the slack, the increased numbers of people who are coming to us and the increased frequency with which they seek help. More people are going hungry as a result of that, and I fear more children are going hungry.

Last year, a year ago in the spring, 11% of the food bank children in the GTA went hungry at least once a week. By February of this year, 16% of the children, more than 11,000 kids, went hungry at least once a week. For many of those kids, they went hungry on a daily basis. Overall, probably about a third of the kids go hungry at least sometimes; twice as many of their parents do. They give up food in order that their children can eat. The risk of hunger is greatest in the families whose social assistance was cut.

Without reading a lot of numbers to you, I have included a chart that makes a comparison between the hunger frequency in 1995 and 1996 and the hunger frequency in those families whose social assistance income was reduced. As you can see at this point, the regular experience of hunger, not just the occasional experience but the regular, once-a-month-or-more experience of hunger now affects 27.8% of the children in food bank households, and of course many more go hungry with less frequency, and 63% of their parents at this point. So not only are the children in some jeopardy but I'd suggest that the parents are too.

Overall, when we talked to food bank users, about half of them report that their health has diminished since the cuts; about two thirds of them say their mental health, probably related to stress, has diminished since the welfare cuts. I can just imagine what families are going through when they don't know how they're going to feed

their children, they're doing everything they can to cope, they know their kids still go hungry, and on top of that they're probably not able to obtain adequate nutrition for themselves.

The cost of housing has a huge impact on the situation right now. As I said, people plan to go hungry now in order to stretch their budget. About twice as many of the families with children who are on GWA or FBA, mothers' allowance, now use part of their food money to pay their rent as did before. Those who were already over the maximum shelter limit one year ago are diverting, of course, even more of their dollars to their rent.

In 1995, 34% of food bank households with kids paid more than the maximum shelter allowance for their rent; now the number is 67% of those families. Again, the situation is worse, as I mentioned, in two-parent families. Not that they are at as high a risk, but when they are unemployed their situation is very, very grave. A vast majority — four out of five, basically — of two-parent families are over the shelter limit now. On top of that, their basic allowance is lower. So what they're left with is considerably less. Their situation, I think, is very, very serious right now.

I have to point out, and I'm sure that this committee is very aware of it, that about 45% or 50% of the basic allowance is what has been lost to families, because they've diverted their basic allowance money to pay their rent. So instead of a 21% decrease in welfare, they have, as far as their disposable income is concerned, something that looks closer to 40% or 50%, and we've seen families where it's about 80% right now.

The families are also at increased risk of homelessness. Some 35% of food bank households with kids who were affected by the cuts report that they've paid their rent late; a quarter of them have already missed a rent payment. So they're really at risk of homelessness right now. About 5% have actually been evicted, families with children, and 9% of them have been threatened with eviction.

It seems to me that there's a false economy in providing this inadequate social assistance to families with children. There are two primary reasons, I suppose. Health problems that the kids are going to suffer are really going to be aggravated by shortages of food. A third of these families are saying, for instance, that they've been unable to afford adequate winter clothing for their kids. So their health is likely to suffer from things like that. They have no margin to buy cough medicine when the kids get a cold, or an aspirin or anything else. There's a whole bunch of hidden costs associated with going to school, which — I have no proof of this — I think could even contribute to dropout rates. It seems unwise to create this kind of situation.

1700

Additionally, I think that parents themselves, rather than being in a situation where they're being pushed into the workforce, have a lessened opportunity. It's clear that single-parent families have more difficulty re-entering the workforce, and I think that the two-parent families, unable to use transit, without telephones, under a great deal of stress, are also less likely to be able to get back to work. I think that we're in real danger right now of

perpetuating or creating — I don't think it is a perpetuation, but we could create a cycle of long-term unemployment and dependence for some of these families if we don't take certain kinds of measures. I think that's just apart from the fact that most of us are quite horrified by the idea of kids going without adequate food.

Some suggestions that I would make: I think we have to find some kind of guaranteed level of income that at least meets children's needs and leaves them in a situation where they have adequate food and adequate safety in their personal lives and not the kind of instability with the threat of homelessness or actual homelessness lying over their heads. I think that the children particularly need greater security of housing. Certainly not a final solution but an interim measure might be at least some kind of a supplement to families who are over the shelter limit now so they don't have to divert so much of their food money to pay their rent. It would seem to be kind of a logical, early step to at least some significant reduction in hunger among children.

The idea of losing rent controls is really a threat to a lot of families who are already in great hardship. Very few of the families with children who are in unsubsidized housing are able, obviously, to find accommodation that's under the shelter limit. What we've basically got now is a situation where we're taking food out of the mouths of babes and putting money into the hands of landlords. I think anything we do to exacerbate that would be a great shame.

Finally, I think we need to explore — and this is something the Daily Bread is more than willing to participate in — what kind of opportunities might make a difference. Why is it that those sole-support families seem to have so much difficulty in re-entering the workforce? What are some of the things that would assist the two-parent families?

I think that we didn't have time, unfortunately, before these hearings to do all the exploration we'd like to on these issues, but we're certainly willing to do more of that. I think that what we presented to you in fact begs a lot of questions and I would very much like to be able to present in the future some more answers to the committee. I'd like to know about the impact on the most vulnerable kids, the preschool kids who tend to be the largest proportion of age groups. I'd like to know something more about the impact of family size, of child support. About 5% of these families are currently getting some child support payments. I'd really like to know more and we intend to research this and we'd love to have an opportunity to come back to you and tell you more about it, more about the work opportunities, the educational background and so on of many of these families. So I think we've got a lot of work ahead of us to explore this, but in the meantime, let me answer your questions. Do you want to add anything, Winston?

Dr Winston Husbands: No, I don't.

The Chair (Mr Richard Patten): Thank you for your presentation. We have about four and a half minutes per party and we begin with the third party.

Mrs Boyd: Thank you very much for coming and thank you for an excellent presentation. It certainly gives us a great deal to think about. I share your concern that

what we've seen so far is really only part of the picture, because for sure, if the protection for tenants is dissipated, we're going to see a much larger problem, aren't we, in terms of the housing issue? The one thing you didn't mention that surprised me a little was the very imminent effect of the \$2 prescription charge, because you're talking about families with children and we all know what the determinants of health tell us around the connection between poor nutrition and poor health for both parents and children. So looking at this particular population and looking at a \$2 prescription cost —

Ms Cox: You've got families right now who can't afford to get on the TTC for two bucks.

Mrs Boyd: That's right, and that's what's going to really put a lot of families right over the edge in terms of being able to look after their children. So that's the only thing I can think of that needs to be added to this picture to really look at the complexity.

One of the issues you raise is this issue of the differential between the support that two-parent families and single-parent families get around the housing subsidy. I must confess I did not realize that the differential was that high, because that's really quite a shocker, isn't it? Because very often you find in these two-parent families that one or the other parent has one form of disability or another; there are reasons why —

Ms Cox: Yes, very often you do, but these are families who are on general welfare and families who have been cut, who are in this situation. Frankly, that came as a surprise to us too. I guess maybe that speaks to some stereotypes. Of course, it's the single-parent families who have had better access to subsidized housing; that's true. But it also is weighted on the basic allowance side. There's a kind of punitive part of the basic allowance for two-parent families. That's a subjective thing, but I perceive it as almost punitive that they're worse off in the long run.

I think that's one of the things that really ought to be explored: who are those families and what do we know about them and what kind of opportunities do we offer them? Frankly, with the less than basic allowance that they have, I think they would be particularly a group of people that I'd like to see with at least some shelter assistance to get them into a situation where they're just not paying so much of their basic allowance for their rent.

Mrs Boyd: Has any of your data included any information about the level of disability of people who are accessing the food bank?

Ms Cox: Yes, we do have data on it. Most families with children, it's three-point-something-or-other per cent, right, Winston?

Dr Husbands: Yes.

Ms Cox: I wrote it; it's in here, anyhow — or slightly more if you include people on CPP. It's a fairly small percentage of disabled people, people who did not have their welfare reduced who are on Canada pension plan or something like that. There are a small percentage also —

Mrs Boyd: You misunderstood me. I meant the children.

Ms Cox: Oh, the children with disabilities. No, actually I don't. I'm sorry. I beg your pardon.

Mrs Boyd: I wasn't clear; I realized that when you started to answer the question.

Ms Cox: I don't have any information on that.

Mrs Boyd: One of the issues that keeps getting raised with us is that parents who have disabled children have lost that percentage of their allowance. There has been no recognition of the fact that they are often on welfare or family benefits because they are looking after children who are disabled.

Ms Cox: Yes, I've certainly talked to mothers in exactly that kind of situation with children who are in disability, but I don't have any quantifiable data. I know that in some countries those parents do get a special caregiver's allowance and certain job search expectations and things are not placed on them because of the care they have to give to their children.

Mrs Boyd: And if you don't pay taxes, tax rebates don't help you, do they?

Ms Cox: They don't make it, no.

Mrs Munro: Thank you very much for the presentation. I was just wondering if you could tell us, when you identified the children in the statistics you gave at the beginning, what age are the children you're using —

Ms Cox: Eighteen and under.

Mrs Munro: The reason I asked was simply because everyone has statistics, and they pull them out to explain their positions. In your diagram you have the figure in 1990 as being particularly low. The information that's been in the Toronto papers suggested there were about 250,000 people in the fall of 1990 and then by December 1992 it had gone up to about 450,000. I just wondered if you could explain that in comparison to the changes in the welfare rates.

1710

Ms Cox: Our numbers in Toronto have never been as high as 250,000 people ever. That would be a figure for the whole of Ontario, I suspect, although even for Ontario I don't have the actual number right now. It may be as high as that across the whole province, but I'm just talking about the greater Toronto area right now.

Mrs Munro: I'm sorry; that obviously is the confusion. The point is simply that despite the changes in the welfare rates, the numbers went up more than twice.

Ms Cox: No. In 1990 the numbers went down, most significantly in families with children. In 1990, the number of food bank users declined when there was an increase in the welfare rates. That increase actually targeted children, and they stayed away in droves. With a little extra money, their moms went to the supermarket like other people.

Mr Pettit: I thank you for your presentation. Being from Hamilton, I wasn't overly familiar with the Daily Bread Food Bank, but since being in Toronto I've learned it has an excellent reputation. I guess I should commend you on your agenda to eliminate your own position.

Ms Cox: Thank you. That is my ambition.

Mr Pettit: I'd like to carry Mrs Munro's point a little further. The former director of the food bank is now a member of the Liberal Party. That particular party realized unprecedented increases in the use of the Daily Bread Food Bank. Some of the Toronto papers reported that there'd been a 100% increase in the number of

people using the banks between 1986 and 1989, and this was at a time when the Liberals were actually boosting welfare rates and it was also a time of economic boom. To me, that seems absurd.

I'd like to ask you again, how do you link an increase in food bank use to welfare rate reductions, when we've seen it was actually increasing drastically at a time when so were the welfare rates?

Ms Cox: Let me explain that to you. Over the period of time, from the mid- to late 1980s, in the boom times, there was an incredible increase in the cost of shelter in the greater Toronto area. Perhaps you remember that. I, unfortunately, bought a house in 1988. I remember it very well. In fact there were not until 1990 any significant increase in welfare rates until those targeted changes. At that point in time, the people we saw in food banks were virtually never employables. They were people who were either single mothers or people on disabilities. Their situation worsened as rents increased, worsened as housing was more and more difficult to find, and in fact there was some gradual erosion in some of the programs over time that supported them.

Under the Social Assistance Review Committee, there was an initial increase in welfare rates that were targeted towards children and moved them forward, and that was when we saw a decrease in food bank use. Subsequent to that, the recession started to hit, and that's when the numbers went very high.

Mr Pettit: Are you attributing a lot of this, then, to the rent control regulations that were in place at the time?

Ms Cox: Obviously not.

Mr Dan Newman (Scarborough Centre): You mentioned that a lot of children are not getting the essentials that they require. What is it going to take for parents to provide those essentials?

Ms Cox: Enough money to buy the food they need for their children, I think. They need opportunities. I certainly am as anxious as you are to get those folks to work if they can work, those people who are not disabled. I think they need a job first, a job that pays enough money to support their families. I believe they will willingly take one and eagerly take one.

Second, if they're not able to work or jobs are not available, I think they need sufficient income just to meet their basic needs. I don't think it's very much to ask.

Mr Kennedy: I appreciate how carefully you've given us the basic facts and figures; I understand how necessary that is to do. But I wonder if either yourself or Dr Husbands could confirm the idea that 28,000 more kids in the GTA are going hungry because of the Conservative government's decision to cut social assistance rates. Does your research prove that? Does it provide evidence towards that? How strongly would you characterize the evidence you've collected in regard to that statement?

Dr Husbands: I would say the evidence is pretty strong. When we looked at the proportion of respondent households occupying accommodation for which they were paying rents in excess of the shelter allowance, comparing 1995 to 1996, without any doubt there has been an increase, in some cases a rather substantial increase. Of course, if people are using their basic allowance to pay their rents, to cover their accommoda-

tion cost, that means there is less money left over to buy food and the other things people have to do. There's a very — I wouldn't want to say an unquestioned relationship, but there is a relationship, without any doubt.

Mr Kennedy: Then in terms of the specific policy the government put forward in defence of cutting welfare rates, that rates were still 10% higher than some average, it's noteworthy that children were cut. If they were in a two-parent, two-children family, they got cut \$80 each; if they were in a one-adult and two-child situation they were cut \$100 each; and if they were in a one-adult, one-child situation they were cut \$60 to \$65 each. It seems pretty arbitrary. Do you see any basis for the kind of rationale the government put forward at that time, now that the time since October has passed? What is your research showing?

Dr Husbands: These are not our figures but data from the Canada Mortgage and Housing Corp. Even for single people, unattached people, for all classes essentially, the average rent for the various levels of accommodation that you would expect people with different household sizes to occupy is always in excess, and sometimes far in excess, of the shelter allowance. This is independent of Daily Bread. On top of that, of course, there is a very low vacancy rate, typically 1%, 1.2% or less, which means there is a lot of difficulty. People who use food banks are experiencing a great deal of difficulty since last October.

Mr Kennedy: So you're referring to rental rates here that are how in relation to the rest of the country?

Ms Cox: Considerably higher than anywhere except Vancouver at this point, 40% higher or so than any other city except for Vancouver, and because they are so much higher, there obviously is not a very logical reason welfare rates would have been cut to that drastic amount: 10% higher. I simply don't understand. When you have 40% higher rents, it doesn't make any sense at all. And it was such an across-the-board sort of cut, it didn't try to take into account all kinds of extenuating and not so extenuating circumstances that people face, including those people who under virtually no circumstance are going to find affordable housing under the shelter limit and are in many instances going to be several hundred dollars above it just because the rental situation is like that.

I don't know. I think there are lots of new ways we might begin to look at some of those cuts, and perhaps there are some people who really need and should get some extra assistance and support right now.

Mr Kennedy: Do you have any correlating evidence from other parts of the province in terms of how we can understand the picture put forward from the greater Toronto area?

Ms Cox: We do know that food bank use has increased right across the province. Not 100% of communities, but most communities, are reporting increases, and the increases range from 30% to 100% in some communities, depending on their local employment situation. We're just right now gathering a second-quarter report to bring that information up to date. The situation seems to be tough and quite similar in many other jurisdictions.

Mr Kennedy: Is it appropriate for us to ask for that information to be submitted to the committee for its deliberation?

The Chair: If you would like to share that, certainly we would be happy to accept it.

Thank you very kindly for your presentation.

Ms Cox: Not at all. Thank you.

The Chair: Is there any other business?

Mr Bartolucci: Mr Chair, I have a motion I'd like to introduce, as follows:

"Since debate and dialogue on children's services has been ongoing since December 1995 at the social development committee;

"Therefore, in the view of the social development committee, the government's agenda for children's services has failed, since children are significantly affected in a negative, hurtful way by government cuts, and this agenda should cease immediately, and recommends to the government that this agenda against children be abolished."

It is self-explanatory, and I have no further debate.

The Chair: Do you have that in writing?

Mr Bartolucci: Yes.

Mrs Boyd: Mr Chair, this matter has been debated at great length, and I would think there's very little need for additional debate. I would call the question on the motion.

The Chair: Would you like to debate this motion?

Mrs Ecker: Yes, if I could have a minute to read it, since we did not receive notice of this, Mr Chair. Actually, I would like to call a five-minute recess before we call the question.

The Chair: Is there agreement for a five-minute recess? Okay.

The committee recessed from 1722 to 1727.

The Chair: I call the committee back to order.

Mrs Boyd: We're not allowed to substitute after 5 o'clock.

The Chair: I am informed by the clerk that the substitution slips were in before 3 o'clock this afternoon.

Mrs Papatello: We're going to need verification on who's on the committee today.

The Chair: Okay, we'll get those.

Clerk of the Committee (Ms Lynn Mellor): Mrs Boyd for Mr Wildman, Mr Bartolucci for Mr Gerretsen, Mrs Papatello for Mr Gravelle, Mrs Ross for Mr Newman after 4:30, and Mr Parker for Mrs Johns.

Mrs Ecker: If this motion were to pass, what does this do to the rest of the 125 order we're under for the hearings and stuff? Does it have any impact?

The Chair: The clerk says we would have to take that under advisement. My understanding of the motion is that it would end the presentations?

Mr Bartolucci: Mr Chair, that's at the discretion of the committee. Any presentation in front of the committee is at the discretion of the committee. This motion, because it was done after presentation, is a motion that stands by itself. If in the view of the committee they'd like to hear presentations on 125, they are certainly still available and we can still do that, is my understanding.

The Chair: Yes, because we still have several days, particularly if we're living up to the 5 o'clock rule, which

only gives us three witnesses a day. How many hours do we have left?

Clerk of the Committee: At least six and a half. I can't tell you right now, but it's the way the motion is worded I'd like to consult before —

Mrs Ecker: So it is possible, if we pass this motion, that it could conceivably end the rest of these hearings? Is that what I'm hearing? That is a possibility, that if we were to pass this motion it would indeed end the rest of these hearings?

The Chair: That's a possibility.

Interjection.

The Chair: You're saying it's not?

Mr Bartolucci: It's at the discretion of the committee.

The Chair: Let me hear your arguments before I make a ruling on this, because I'd like to seek advice.

Mrs Pupatello: Mr Chair, if there is no further debate, we'd like to call the question.

The Chair: I haven't yet asked if there is further debate on the motion.

Mrs Munro: I come back to the question that has already been raised. This motion is asking us to agree to the failure of this agenda, and I think the purpose of the hearings was to examine this. I think it puts in question the validity of any further hearing if this motion were to pass, because it states here the agenda has failed, and obviously we haven't completed our hearings.

Mr John L. Parker (York East): I would speak in support of what Mrs Munro has just said. It looks to me as though this resolution calls the issue to a question and we decide the issue once and for all and that is the end of the discussion, as I see it. It would appear to me that this resolution brings the issue to a head. If we decide this resolution, that puts an end to the process.

The Chair: We have two interpretations of that, one that it's still an open question and this is a resolution that stands on its own, and the other is that it would close debate.

Mrs Boyd: First of all, I'm a little puzzled that we're going on when we had called the question, but let's leave it at that.

On the issue of this motion, if this motion were not to pass, I see no reason to assume that would end the discussion at all in this room. If the motion were to pass, it might end the discussion. But it seems to me if the motion did not pass, there is no reason to end the discussion. I would assume, at least from what government members are saying, that they would be saying no to the motion because they wanted to hear more from the community around the issue.

Mr Pettit: Just quickly, Chair, it says here, "In the view of the social development committee...." I'm not so sure that's the view of the whole committee, maybe the view of a small minority.

Mr Bartolucci: That's the purpose of the vote, is it not, Mr Chair?

Mr Pettit: If it is, then I would say we vote on it.

The Chair: Is there any further debate? No? Then I call the question.

Interjections: Recorded vote.

Ayes

Bartolucci, Boyd, Kennedy, Pupatello.

Nays

Ecker, Munro, Parker, Pettit, Ross, Smith.

The Chair: The motion is defeated.

Mrs Pupatello: A question to the clerk: Are all those who voted members of the committee right now, bona fide?

Clerk of the Committee: I read that to you earlier on, who were the legal members of the committee.

Mr Bartolucci: Mr Chair, just a point of clarification, because I'm not familiar yet with the standing orders around here. I am very familiar with what happens at regional and city council. After a question is called, debate ceases. Is that not correct? The debate on the question ceases and we move to the vote.

The Chair: Yes.

Mr Bartolucci: Yes? That wasn't done today, Mr Chair.

The Chair: I didn't put the question.

Mr Bartolucci: No, the question was put by the member, and anybody can put a question, correct? No? Clarify it for me.

The Chair: I regret that I didn't understand that you had actually moved the question as such.

Mrs Boyd: That's why she called a recess.

The Chair: Yes, we called a recess, and then we had debate. Now we can go back to the original question, if you like, and vote on that, and then we've already voted on this as well, if we have unanimous consent.

Mr Bartolucci: Then it's my understanding that that's the only way we repair a wrong here? In fact, this vote should have already been done once the question was called. That's why I say I want clarity of procedure here. Once a person calls the question, the vote is taken. Those are the rules of procedure. If the Chair recognizes that the question is called, we proceed to the vote.

Clerk Assistant and Clerk of Committees (Ms Deborah Deller): Can I jump in here? I wasn't here and I'm not certain what happened, but if I understand correctly, there was a debate going on on a motion. Mrs Boyd then moved that the question be now put. The first vote then would be on that question, that the question be now put. If that carried, you would move on to the original question.

The Chair: I am advised that the sequence of events was a request for a five-minute recess before the question.

Mrs Boyd: No, that's not so.

The Chair: That's not your recollection?

Mrs Boyd: She called for the recess after I called for the question, and she called for the recess because she didn't have any members except herself and her colleague from Durham-York.

Mr Parker: Aren't we talking now about water under the bridge? Whatever was done was done. The time to object to the process, if there was a concern about the process, was at that time. History has moved on. The vote was called, the vote has been taken, the vote was recorded. There was a call for a recorded vote and that's what was done. I can't understand what we're talking about now unless it's some attempt to unwind the clock, and I'm not sure that's a productive exercise.

The Chair: I think the understanding is that once the question is put, that's it. The clerk advises me that a request for a recess may still be requested, and it was in this particular instance.

Mrs Ecker: Also, I do believe I had put a point of order on the question as well, in terms of how that impacted on the hearings. I don't know whether that has any impact on the clerk's ruling.

Mrs Pupatello: Do I have the floor now, Chair? I just want it to be noted, for government members especially, that it took us an awful lot of time to receive the 125 committee on children's services and the negative effects of the Conservative government's cutbacks on children's services. We had a very significant presentation being made here about the effects to children and you had two members sitting here, and it's not comparable to how many opposition members sit at committee.

It's very important that government members, who are in a position to be influencing decision-making in a far greater way, supposedly, than opposition members — that you be here when you're scheduled to be here and hear the kinds of things that are important to the children of Ontario. If there's any lesson to be learned here, it's that those who are advocating on behalf of children have the right to be listened to by all government members who are required to be here. I think that is the important lesson to be learned here.

Mrs Ecker: With all due respect, I find it highly offensive that the member opposite would try and lecture the government members on their responsibilities.

Mrs Pupatello: Janet, you had two members sitting here.

Mrs Ecker: We have sat in many committees —
Interjection.

Mrs Ecker: Excuse me, I have the floor at the moment. We've been in many committee hearings where there have been very important presentations, we've been

in the Legislature where there have been very important debates, and members from all parties sometimes are there and sometimes are not there. If we're going to start pointing fingers and you want to get into that kind of game, we can certainly play that, but I don't think it's very productive or very helpful to what's going on here.

Mr Bartolucci: Just as a final point, since I moved the motion, I'd like it to be known that I think it is important that members of the committee be here. We are not preaching. This is of significant importance.

I will be watching and I will be following procedure, and as I become more adept at handling the procedure of this place, I will be questioning a whole lot more. Clearly this vote should have been done, and you're right, Mr Parker: It is water under the bridge. You were able this time to beat us. But let me tell you, we will be watching procedure to ensure that we maximize any advantage that may come on the opposition side in order to stop the faulty agenda of this government.

Mr Boyd: Perhaps one of the lessons from this for the government — and I think every government of every ilk finds this out — is that motions can be moved at any time, and it is important if the government considers the work of the committee to be important, that it have sufficient members present to meet that challenge at any point. I can recall a great deal of resentment on the part of the member for Huron during the Bill 26 hearings when the government allowed the majority of the committee to slide and a vote was taken. There was a great hoo-ha about it and much resentment. I would have thought the government had learned its lesson at that point, that its job is to keep the majority if it does not want unfriendly motions from an opposition side.

The Chair: Any other comments?

All right. I adjourn today's meeting until 3:30 tomorrow afternoon.

The committee adjourned at 1741.

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STANDING COMMITTEE ON SOCIAL DEVELOPMENT

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Vice-Chair / Vice-Président: Gerretsen, John (Kingston and The Islands / Kingston et Les Îles L)

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*Patten, Richard (Ottawa Centre / -Centre L)

*Pettit, Trevor (Hamilton Mountain PC)

Preston, Peter L. (Brant-Haldimand PC)

Smith, Bruce (Middlesex PC)

Wildman, Bud (Algoma ND)

**In attendance / présents*

Substitutions present / Membres remplaçants présents:

Bartolucci, Rick (Sudbury L) for Mr Gerretsen

Boyd, Marion (London Centre / -Centre ND) for Mr Laughren

Gravelle, Michael (Port Arthur L) for Mr Patten

Parker, John L. (York East / -Est PC) for Mrs Johns

Pupatello, Sandra (Windsor-Sandwich L) for Mr Gravelle

Ross, Lillian (Hamilton West / -Ouest PC) for Mr Newman

Clerk / Greffière: Lynn Mellor

Also taking part / Autres participants et participantes:

Deborah Deller, Clerk Assistant and Clerk of Committees

Staff / Personnel: Ted Glenn, research officer, Legislative Research Service

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Journal des débats (Hansard)

Mardi 11 juin 1996

**Standing committee on
social development**

**Comité permanent des
affaires sociales**

Children's services

Services à l'enfance



Chair: Richard Patten
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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
SOCIAL DEVELOPMENTCOMITÉ PERMANENT DES
AFFAIRES SOCIALES

Tuesday 11 June 1996

Mardi 11 juin 1996

The committee met at 1605 in room 151.

CHILDREN'S SERVICES

Consideration of the designated matter pursuant to standing order 125 relating to the impact of the Conservative government funding cuts on children and children's services in the province of Ontario.

ONTARIO ASSOCIATION OF
RESIDENCES TREATING YOUTH

The Chair (Mr Richard Patten): We can convene our meeting this afternoon, resumption of the standing committee on social development.

Gentlemen, the standing order matter is the impact of Conservative government funding cuts on children and on children's services in the province of Ontario, and we welcome you today. You have half an hour. You may use that time as you wish. Normally witnesses make a presentation and allow some time for questions, but whatever proportion is up to you, and whatever combination you see fit. We welcome you, and we will begin the questioning subsequently with the government side.

Mrs Janet Ecker (Durham West): We're pleased that the Liberals have joined us for the committee hearing this afternoon. Welcome, Mr Bartolucci.

Mr Rick Bartolucci (Sudbury): Obviously, Ms Ecker, it's so nice to be here. I see we have a full complement, but you're short one. Isn't that something. Oh, well, we'll go on anyway.

Mrs Ecker: We waited patiently for you.

The Chair: All right, let's begin to hear our first witnesses today. Welcome, gentlemen.

Mr Alan Hayes: I appreciate the opportunity of presenting to you today.

The Chair: I'm sorry. Could you identify yourselves, please.

Mr Hayes: My name is Alan Hayes. I'm the executive director of Haydon Youth Services and a board member of the Ontario Association of Residences Treating Youth.

Mr Larry Sanders: My name is Larry Sanders. I'm the chairman and chief executive officer of Bayfield Homes and the president of the Ontario Association of Residences Treating Youth.

Mr Hayes: The Ontario Association of Residences Treating Youth is a provincial network of 43 private sector agencies providing residential services on a per diem basis to children from infants to young adults. OARTY agencies provide over 800 residential beds for children across the province in settings including group homes, specialized foster care and treatment facilities.

OARTY agencies have historically been the major source of residential care for Ontario's neediest youngsters, that is, those whom due to the severity of their disturbance and lack of supportive, healthy family systems have been made wards of the crown. This means simply that the province has accepted responsibility for the care and the upbringing of these children. It is imperative that the province and we as society recognize the tremendous long-term impact decisions we make now involving these children will have on the future prospects of their being healthy, responsible parents as well as contributors to society.

In a 1993 study of OARTY agencies called Partners in Care, Robert Fulton found that in the fiscal year 1991-92, 25% of all OARTY programs operated at a loss. Since 1992, OARTY agencies have experienced substantially reduced revenues due to government financial constraints, while operating costs have continued to increase. While many of our transfer payment partners have been able to deal with these constraints by operating at reduced occupancy rates or in fact eliminating essential residential beds from the system, per diem funded facilities only receive funding for actual services rendered. Simply, that means if you have five children in a residence, you get paid for five; if you have eight, you get paid for eight.

Unfortunately, the result of this imbalance of revenue versus expense has been the closure through bankruptcy or financial crisis of several established and quality programs. Unless immediate attention is paid to this issue, I believe this trend will continue.

If the private sector is allowed to be eliminated from the spectrum of services available to the province in caring for our neediest youngsters, the unfortunate result will be fewer services for children servicing fewer children at substantially more cost.

An April 1996 Ministry of Community and Social Services area office study of residential care in the Toronto area clearly shows that transfer payment facilities are consistently operated at lower occupancy and at greater cost than those in the private per diem sector. As an example, adolescent coed transfer payment facilities operated at 80.4% occupancy, at an average cost of \$249.70 per child per day. Per diem residences treating the same group operated at 101.8% occupancy, at an average of \$184 per day per child.

I would like to leave you with one person's evaluation of the importance of the private sector and leave it to you to assess the devastating impact in the reduction or elimination of this sector. At our 1993 annual conference, Mr Bruce Rivers, executive director of the Children's Aid Society of Metropolitan Toronto, in his keynote address had the following things to say to us:

"The broad perception among those that work with you directly...is that more than any other sector, you have continued to develop programs that respond to changing client needs. Your screening process is flexible, responsive, timely and not rooted in a bureaucratic process of screening out but rather screening in. As a sector you are seen as accommodating a wider variety of very troubled children and youth; you're flexible on an individual case-by-case basis and are inclined to try harder and longer with high-risk kids. Each of you has tended towards developing specialties and expertise with particular client groups. Together, as a sector, you have created a comprehensive array of residential services and as evidenced by your research, entitled *Partners in Care*, you have done an outstanding job of rising to a most significant challenge."

Clearly this valuable resource to our vulnerable and needy children cannot be allowed to disappear.

Larry will now present to you a proposal that would both address the needs of our current fiscal situation and allow for a comprehensive and cohesive delivery of services to our children in need.

Mr Sanders: I'd like to present to you a summary of the highlights from the Integrated Residential Services of Ontario, A Private Sector Solution, developed by the Ontario Association of Residences Treating Youth. This proposal has been circulated and/or presented to the MCSS minister, David Tsubouchi, and his staff, including an assistant deputy minister, the director of children's services and policy analysts. We were fortunate to be included in the current consultation process conducted by MCSS.

We've consulted with CAS's across the province, ranging from Ottawa to Metro to London to Sudbury, and we've included many of their suggestions in the proposal. We've also circulated and/or discussed the proposal with other children's service providers. As well, many MPPs have been briefed with respect to this proposal.

Residential services today: A wide range of children benefit from residential services in the province of Ontario. These children are helped by a diverse group of service providers who utilize different approaches, expect different outcomes, within different service sectors and are funded by different models. The current system is fragmented and unnecessarily duplicated due to a lack of coordination and inequity in funding arrangements.

Hard-to-serve children and youth have been bounced from placement to placement, abused by the current system. In order to gain access to residential services, many children have to become wards of the state, resulting in a very expensive, painful and often unnecessary step.

There have been ongoing projects, usually driven by the government of the day, to make the system more efficient, effective and accountable. Seen in the short run, residential services are the most intrusive and expensive interventions. Done effectively, residential services can be the best possible intervention, with long-term savings to society.

Numerous task forces, working groups, policy framework groups and committees have completed research and reported their findings. Some excellent ideas have been generated; however, the government of the day has failed to implement many of the recommendations. It is

incumbent upon the Progressive Conservative government to take a commonsense, cost-saving approach to providing responsible residential services to our children and youth.

The solution: The same method of funding must be used for all residential service providers, based on a per diem model, administered by one integrated service delivery system. This will ensure a maximum utilization of existing resources, guarantee financial accountability and create significant cost savings for the government. This centralized mechanism will yield reliable data, as one tracking system will be responsible and will provide equal and coordinated access for children and youth regardless of where they live in Ontario. It will be efficient and effective from the consumers' perspective and serve those with the greatest need. A single-point access system will be an investment in our families and will prevent our children from being drawn into a variety of systems.

The fundamental principles provide the framework for this proposal:

(1) The funding shall follow the child through the system.

(2) Where possible, children shall stay in their own communities.

(3) All avenues for non-residential services shall be explored prior to a request for residential care.

(4) Mandatory services require priority access for emergency and receiving beds and appropriate structures shall be put in place to meet these needs.

(5) Where necessary, the mandatory services shall automatically become the case managers for protection in court-related and court-ordered cases.

(6) A levels-of-care model shall provide the basis for the new system.

(7) A single-point access structure existing in our system today shall become the local access to residential services — the acronym LABS. All communities shall develop a LABS.

(8) A comprehensive information system shall be developed to ensure appropriate residential placements, track and project transient services, follow the child through the system and track the patterns of utilization.

(9) All residential services shall be funded on a per diem basis.

(10) The total number of residential beds shall be provincially capped to ensure fiscal control.

With the proposal there are definitions with respect to the models that we are presenting. I won't go into these in terms of briefing you, but they are contained in there and you may read them to flesh out the entire proposal. I would like to draw your attention to some statistical and financial information that you may find of interest.

Approximately 30,000 children receive residential care each year. Under child and family intervention, child treatment, young offenders, child development and outside placement institution line items account for approximately 1,570,000 days of care. The total money spent for those days of care is \$337 million. Assuming an average per diem of \$200, the government would recognize an immediate saving of \$23,550,000. A further \$10 million to \$12 million would be saved through

centralizing placement case and resource management of the many CAS systems.

All children of the province would have equal access to all services in the province, regardless of their actual geographic location. Through centralized data collection, the ministry would have more reliable information regarding the system to make future decisions involving the care of children in the province.

Finally, the next steps, of which there are four: The first one would be commitment from the province; the second would be a provincial mechanism for hiring or tendering the PIRSE, which is the provincial integration for residential services enterprise; the third would be a strategy and time frame to change residential funding to per diem; and finally, a database design and hardware requirements for an interactive system.

The Chair: Are you ready for questions at this point?

Mr Sanders: Yes.

The Chair: All right. Thank you for the presentation. We have 18 minutes, so that would be six minutes for each side. We'll begin with the government side, Mr Preston.

Mr Peter L. Preston (Brant-Haldimand): This is a great proposal. There are some points in it that I'd like to talk to you about, but all in all it's a great proposal. I'm going to put forward a few points here and then ask you a question when I'm finished.

A transfer payment facility, budgets not spent. "Better get it spent." Four canoes sit on a roof in a secure custody; four canoes that have been there for seven years, haven't been used. The next time they were underbudget, four mountain bikes, \$50,000 to \$60,000 worth of sports equipment in a cupboard, and these people say: "Well, the sentence ends when they get to the door. From now on it's going to be a nurturing atmosphere."

That's a transfer payment facility that gets about \$350 a day. Whether they're full or not, their budget stands. If it's not spent, they get rid of it at the end of the year.

1620

At another facility — now, this is not transfer — the swimming pool that's an indoor pool is full of household waste. The section 27 teacher goes in, goes downstairs and locks the door because he can't stand the kids. There are no doors on any rooms including the bathroom. Get ready for this one: An HIV-positive boy bites the nipple off a girl. They had to sell all their horses because of the cruel treatment. They were using chickens for golf. The school board coordinator takes a boy and his father in there and says, "This is where we're going to send you." The father says: "If you do, I'll sue you. Keep my kid out of there."

Those are two basic ways of funding: one transfer, one a per diem. The second one is \$300 a day. Do you believe, sir, that there should be a complete review of both ways of funding, and if people are not up to scratch they should be closed down or brought up to scratch?

Mr Hayes: I would find it hard to believe that those people can pass their licence.

Mr Preston: It went on for two years.

Mr Hayes: There are licensing requirements, and I would say it has to go back to the licensing people. Obviously they weren't following CFSA standards.

Mr Preston: That's obvious. These are documented situations by the OPP. So you're saying that even with our CAS standards and with the government standards, they still should be reviewed with a view to either closing them down or bringing them up to scratch?

Mr Hayes: With your second situation, I would say definitely.

Mr Preston: The only comment I have about your proposal is that I don't agree with keeping children in their own community. That's where they got in trouble. You keep them in their own community, that's where they continue to be in trouble. They should be outside their community.

Mr Sanders: Definitely not all communities can have all services, so it's inevitable that children will be placed outside of their own communities. However, given that attempting to repatriate these children and/or reintegrate them back into their family situation is the ultimate objective, by placing them in their home community there's a better chance of that reintegration. That's why that component is in the proposal.

Mr Preston: That's a point I've always disagreed with.

Mrs Ecker: Thank you very much for coming today and bringing forward a very detailed and I think worthwhile proposal. I wondered if you would elaborate a little on one of the concepts. You talked about the fundamental principles, that "The funding shall follow the child through the system." How do you see that working? Do you think, given the rules and the regulations and the structures that government is faced with all the time, it's possible to reform the system to do something like that?

Mr Sanders: The short answer is yes, it is possible. In terms of the funding following the child, essentially what is happening today is that children are bounced from pillar to post, system to system. We need one consistent system, we need one consistent evaluation process, and if the dollars are attached to that specific child, we are stating that it would be a cost-saving measure. Instead of going through intake after intake after intake, from program to program, from administration to administration and requirement to requirement, consistently the child would be tracked and we'd be able to plan for that child more effectively and more efficiently. From the time the child enters the system, a plan, a life plan, if you will, could be put into place with the view of discharging that child and making them a functional member of society.

Mr Hayes: One of the things we built into the proposal was that each community — now, that's a leap, deciding what "community" is — would be enveloped: X amount of dollars based on historical patterns for residential care. When the child in Kapuskasing, say, needs residential treatment that's not available up north, the money for his care would come out of the pool of the envelope from the Kapuskasing community, would follow the child to whatever facility in the province is available and is best suited for that child's needs. It would guarantee equal access, and that's not happening at this point.

Mrs Sandra Pupatello (Windsor-Sandwich): Thanks for your presentation today. Just for clarification, you're a for-profit agency whose service is purchased?

Mr Hayes: Some of our agencies are for-profit, some are non-profit, but they're all private, per-diem funded.

Mrs Papatello: Of the 43, how many are profit and non-profit?

Mr Hayes: I believe it's about half and half. About half are supposedly for-profit and the other half are non-profit.

Mrs Papatello: I'm curious about the comments made by our government member. I'm curious to know the dates of those events, because I think it would illustrate that the ministry is not following through on confirming that agencies are conforming to regulation. I wouldn't mind if the member tabled the date of the incidents.

Mr Preston: I can get those for you. I've already asked for them. I'll get them very easily.

Mrs Papatello: I think the minister should know, if he doesn't already, and then we can see exactly what kind of follow-up is required. I think that's essential.

I have some questions. Today you took the time to present something you have been lobbying for in terms of funding. We've advocated for a long time about the funding methods for children's service in terms of the various styles that currently exist in funding. In one of your documents, the executive summary of the Partners in Care document, you illustrate how wide the funding sources are, all the various sources. We've advocated for some time to streamline that, that if well-run agencies didn't have the parameters set by the various funding sources, you would streamline administration in terms of access to funds, using staff for actual service delivery instead of accessing funding, because you're going to health, education, a variety of them, to meet all the needs of the children.

I'd like your comment on the change in funding, whether there is anything other than moving to the per diem that at least in the interim you could move quickly on in streamlining the funding.

I'd like you to comment as well on the numbers of your clients who would be considered youth as opposed to children, and in terms of the age groups, what are the age groups? What percentage would be, say, 16 to 18? And what effect if any does the youth unemployment rate have on the clients? For example, are they youth who could have been served by programs dedicated to having these young people enter the workforce where the programs simply aren't there? Do you see a need for the government to be moving in the direction of targeting young people for employment programs?

Mr Sanders: Gosh, that's about eight questions, but I'm going to attempt to answer at least four of those.

The first notion you're referring to is called integration, which is a policy framework initiative put forth I believe by the previous government. That notion of integration is an age-old goal for many organizations, and that is to take similar services and put them under the auspices of one administration, thereby saving funds at that administrative level. They've been doing it since the early 1960s in the USA and they've been doing it in the 1980s here in Ontario, and we're attempting to do it, and you can see it across the different service levels in Ontario today. It's in vogue today; however, I don't know

that the notion of integration does save any money. The research will tell you that it doesn't.

Your second question about age groups: The Ontario Association of Residences Treating Youth has a very wide range of age groups in that we have agencies that service developmentally handicapped, we have agencies that service the medically fragile, we have agencies that service young offenders, we have agencies that service conduct disorder children, we have agencies that service psychiatric kids. The range, approximately, would be from as young as six or seven through to about 20.

Just to complete that answer, we also have a situation where we have services being provided to the DH sector where these children have grown up in these residences and now have become adults. That is an issue that adults are occupying children's beds. It's an imperative issue in the sense that these adults, certainly in OARTY's view, should continue to stay there until such time that appropriate placement can be found for them, and that is additional services for that population.

The third component of your question was regarding youth employment. In terms of youth employment, there are many services that belong to the OARTY organization that are working with children to facilitate or develop a work ethic, and thereby one of the goals is to create taxpaying citizens. We are working with these kids in terms of teaching them skills that would provide them with the basis of becoming a member of the workforce.

1630

Mr David S. Cooke (Windsor-Riverside): A couple of questions to follow up on previous questions. Half of your members being for-profit centres, can you give me an idea, when you say "for-profit," of what that means in terms of percentage return or how much of the money that government or individuals are paying is going to profit? A comparison of wage rates with the government sector.

Mr Hayes: Our wage rates a few years ago actually were brought up to a comparable level with transfer payment organizations. We've probably slipped back a little since then, due to budget cuts mostly, the social contract as well as other constraints that have come up since then. As I indicated, back in 1991-92, about 25% of the agencies were actually losing money, and since that time, that problem's increased tremendously. When social contract cuts were made to children's aid and transfer payments, when other constraints were made, they were passed on to our per diems.

Mr Cooke: About 25% — some are making money. I just want to get an idea of what kinds of dollars are made, who owns these.

Mr Sanders: The properties or the facilities are owned by private individuals.

Mr Cooke: Any chain operations or any foreign ownership or anything like that?

Mr Sanders: No, sir, not that I'm aware of.

Mr Cooke: These are all mom-and-pop operations or locally owned operations.

Mr Sanders: These are ma-and-pa operations, some of which have grown into fair-sized organizations. In terms of residential treatment, perhaps the largest I know of

would maybe be 50 beds at the outside. But the majority of them are operations that are 10- or 12-bed facilities.

Mr Cooke: There's one paragraph in the proposal document right at the beginning that I want you to explain for me. The third paragraph down says, "Done effectively, residential services can be the best possible intervention with long-term savings to society." I want to know what you meant by that. Certainly my experience, although it's many years ago when I practised social work, was that residential treatment we avoided as best we could because once in the system, it's expensive and the success rate is not terribly high.

Mr Hayes: That continues to be the situation today. Residential care is looked at as the final solution after everything else has been attempted. In recent times, we've seen even more of a push towards non-residential care. What we're meaning in that paragraph is that there are times, for the safety of the child, the safety of society and to consolidate issues with the kid and the growth of the kid, that you need a 24-hour-a-day program.

We're certainly not advocating that you move a child off and leave them there for eight years in a residence or bounce them around from residence to residence. One of the things you will see from our proposal is that when a child enters our system, there has to be a case manager, there have to be some time frames, there have to be direct goals and there has to be a follow-up plan. That child is going back to the community, and that's got to be the goal going in.

As far as long-term benefits to the child, too often we've seen kids who have been bounced from pillar to post who, upon entering adult years or later teen years, are going off to being incarcerated, where if there had been some more stringent intervention earlier — we found a lot of successful cases where kids were definitely heading off to jail, heading off in that route where we've been able to curtail that, turn it around, get them back into school, get them working and many times get them reinvolved with the family.

Mr Cooke: Unless things have changed a lot in terms of tracking, it's very difficult to say what is successful and what isn't successful, because we don't do a lot of tracking in this province of what happens to young people where we've intervened past the time that there's direct involvement of the state, either through children's aid societies or others.

Mr Sanders: It's very important for an organization to go the distance with a child. I think your point is well taken in the sense that it is unsuccessful when it's done ineffectively; that is, when the child begins to act out, then the child is moved on to the next facility. That's the point we're making.

In essence, children have been underserved. We're here to talk about cutbacks, and those cutbacks have affected the decisions of social workers such as yourself, sir, who have attempted to place a child within a confinement that has been defined by dollars.

If the child is placed appropriately, then that facility would be able to provide an adequate service for that child, therefore the child would receive the best possible treatment for the presenting situation and therefore be in that facility a shorter period of time.

The Chair: Gentlemen, our time is up. I thank you for taking the time and sharing your views and your presentation with us. It was very interesting.

Ladies and gentlemen, prior to hearing from the next witness, you know that the witness who was to address us at 3:30 this afternoon was unavoidably detained and that we have unanimous consent to reschedule that party from the NDP alternate list; is that correct? Okay, good. Thank you. Could we have our next witness, please.

SAULT STE MARIE
INDIAN FRIENDSHIP CENTRE
NEECH KE WEHN HOMES

The Chair: Mrs Harrington, welcome. You have one half-hour. You may choose to speak for the full time or allow some time for questions. Whatever time you have left following your presentation will be divided up equally between the three parties to ask questions of you. We will begin the questions from the official opposition this round. Welcome to our committee hearing today.

Ms Carolyn Harrington: I thank you very much. My name is Carolyn Harrington. I'm from Sault Ste Marie, Ontario. I'm here to talk for the Sault Ste Marie Indian Friendship Centre and also for urban native housing, Neech Ke Wehn Homes.

I'm very sorry I haven't brought a written presentation. I just found out Friday I was coming and I wanted to spend my time talking to people in the community so that I was able to bring you up-to-date information. I could say that the native tradition is oral, but that certainly would be a copout. My reason is that I wanted to spend my time talking to people.

When I was leaving the Sault early this morning I saw a friendly face in the airport. It was Bud Wildman, and I said, "Oh, thank heavens you're going." He said: "Oh, no, I'm going in the opposite direction. I'm going out west." I was feeling a little down and I walked in the building today, and there were two school groups from the Sault having their photos taken on the steps, and Tony Martin, so thank you. Even my cousin is here, so I've probably got more friends in the building than you have. After having such a relaxed introduction, you're not going to believe this, but I'm incredibly nervous. If my mind goes blank, please ask me a question and get me going again.

I'll describe the organization I represent. It is urban native, and we are in downtown Sault Ste Marie, an urban inner-city situation. However, I represent also a housing organization. We have units throughout the city, social assistance housing, so the boundaries are a bit broader. I understand that this is the first time an urban native representative has come to this body, so I believe I'm also speaking for groups across the province that have lost their children's programs at the Indian friendship centres.

1640

We have had programming for children for up to 20 years in our centres. The very first programs that came to the Indian friendship centres were child-based. They were the Little Beavers programs from ages five to 13, because

it was believed that this was really where change could begin within the native communities.

I don't believe it's only native children who are at risk and vulnerable at this time. However, the statistics are much higher for children in children's aid who are native. Among children entering the social justice system the rates are higher for native children. I want to stress that we include in our programs all children in our downtown area, so I hope what I have to say is a little broader than for native children.

We have had some very successful programs for children based on native models. Rather than really dwell on the negative and on what we've lost in the last year, I'd like to talk about what we've learned and how we'd like to come back at it if we're given the chance. Tony asked me last year if I'd be interested in coming, when the programs were cancelled in October, if I'd like to come down and talk. That was October or November and I said, "Yes, I'll come," and then I didn't hear until Friday afternoon that I was to be asked. However, I think this is fortunate, because if you'd listened to me last October or November, I was a very angry person. After six months of reflection I think you'll have a much more positive talk from me today. We've all had a lot of time to look at our programs in the Sault and maybe come back a little bit stronger and a little bit better. My talk will be about the impacts I've discovered in the last few days and about our recommendations if we're given a chance to have another go.

We have one program that continues in the Sault: our breakfast program. I'd like to come back to it maybe in the question and answer period because it's a very strong program, not just for us but across the province. It's very cost-effective and wonderful in many ways, so I'd like to talk about that. Much of what I have to say today is based on seeing the kids still in that program. We like to go over and drop in and just keep in touch with them.

That's the only place we have a program today, so I've had to go to the schools and to the crisis centres just to follow up on our kids and see how they're doing. I'm glad I had that opportunity because when I asked, "Just what impact has this had on these kids in the last six months?" the people, the teachers, the principals said, "No one has asked us that question."

If you people don't hear anything I've had to say today, I think I'm still a step ahead because we've promised each other to come together, when I go back, and sit down and share so we have some statistics, and maybe what you can do for me is tell me where to send those statistics so we have a little bit of impact.

Whom have I talked to? I've talked to principals, some teachers, crisis workers and some court workers about what impacts they've seen. The most universal is that the kids are hungry. These are inner-city kids, you must remember. That's the first thing they all mentioned, that the kids are hungry, that they're coming to school without food. As every teacher will say, and then you know, kids who are hungry don't learn as well, so down the road we're going to have trouble. They're coming maybe with just a slice of bread, hoping that there's some peanut butter that they can add to their sandwich. Teachers have asked that whatever dollars are designated

down the road, to please direct them at food. They told me to ask you that.

There are a few other things we might not have noticed. I asked secretaries in the offices, "What have you noticed?" They said: "You know, there are a lot of kids moving. There are kids who have moved up to seven times this spring. When people's money runs out, they change apartments." They're moving to live with fathers; they're moving out into the country to live with grandparents; they're moving just within the area to cheaper accommodations, but they're on the move. Another sign is that they said the phones are being cut off. The secretaries said, "Whenever we phone if a child is away, the phones are being cut off."

This is very significant, I believe, because it shows the instability in the life of a child at this time. Maybe with the increasing sense of isolation of living within a small apartment without a telephone, probably without much power, things lock them into the community so they're becoming increasingly isolated and that feeling of stability is really going.

Another thing is — this comes from teachers, not the principals — the kids are fighting, not necessarily among themselves but with teachers. They're getting crabby, they're cranky, and this could come from perhaps stress at home or maybe they're hungry.

Fourth, this is coming from the court workers and is the only thing I can give you statistics for; all the other things were the people saying, "Well, no one's asked us and we don't have any statistics, but it's my gut feeling that this is what's happening, and there's been an awful lot of this or that": The court workers can say with statistics that numbers aren't up in new kids coming up as young offenders, but the numbers that are reoffending are rising. I could be wrong, I've just had the day to think about this, but I think perhaps that is because of the long waiting lists for counselling. There might be other reasons you can think of for that one.

Our recommendations are in building community cohesiveness. I think the different things that are lacking in the schools right now, from our perspective, are a sense of belonging and stability, all those things that don't come from individuals and don't necessarily come from government workers, that come from community cohesiveness.

How do we rebuild that? I hope that we might start at places like the Indian friendship centres and community organizations. Our community organizations are places where you can plug in volunteers, where you can start teaching the skills of looking after your own, where you can have people from colleges come and do their placements. You don't find co-op students going to work on the third floor of Comsoc. You find them going to work at the soup kitchens and places where they're going to get hands-on experience — so co-ops, Sault College Placements, Algoma College Placements, those kinds of people.

What about alternative measures? The CSOs, community service orders — kids like those aren't going to go and work in Manpower. They're going to come to a community-based organization, so we're hoping that somehow the government will take our suggestion and

put funding into community organizations where there can be perhaps a relearning of community skills and volunteer skills, and working as a family. Parents often come and work within community organizations; you bring in your grandparents. It's a more holistic way of looking at it. We call it the medicine wheel, and I'm sure you've all heard about the circle and native ways of approaching problems, but community-based brings us all in to address children's issues, and I think you'd get your best value for your dollar in that area.

1650

From a native perspective, community organizations offer programs that are very appealing to our young. We've found that something like a drum group brings out the best in young kids. For one thing, you have to be drug- and alcohol-free, and it gives a very good sense of peer support to kids. They learn a lot from giving and sharing within a drum group, so it's something within our native culture that is applicable. Other communities probably have other techniques that they use.

We have talking circles. Again, that's a culturally based method of improving communication and a sense of belonging, and it costs absolutely no money; you just need an old hall with a bunch of chairs and kids sitting around.

I believe that community organizations, as I say, are very low-cost. We marvelled at the fact that our program, which cost, I think it was, \$57,000 to run the Little Beavers for the year, would be cancelled when it provided opportunities for maybe up to 100 kids, and some other things that I'd hate to suggest were left to go on. I know there have to be restraints and we're all willing to accept that. We're just asking that, next round, maybe a little more input from the organizations would be helpful, and not just a little input; if you could ask us what works and what doesn't, I'm sure we'll be honest.

I have to do a recap and see what I've missed.

I believe there is some thought of developing — it used to be called a children's secretariat, but that sort of format. Maybe I'm mistaken. Children's rights or something came out last week. This is a very strong approach, because you'd have people from all angles coming in together. Again, we call this the medicine wheel within the native community.

When I went around to talk to people, strangely enough it was the schools that had the most to say about the kids. I suppose that's because they're with the kids day and night, but you never think of the schools as being empathetic towards social problems, but more and more I think they're taking on the responsibilities that perhaps some of the community groups like the friendship centre used to bear, and I'm not sure how much more they can be stretched. I'll come back again to that program we had for \$57,000. That funded one person in a basement setting. You can hire space; you can rent a school gym for a very low fee; you can take kids swimming to the neighbourhood pool. You can swell your ranks through the summer with the summer employment students, maybe get five or six of those, and who knows how many students from the schools. We always have maybe five or six student placements helping us out. So for that \$57,000 you get very good value for your dollar.

I think what you need is one person there for those kids, one person who's there in the morning, launching in to Breakfast Buddies, the breakfast program, where you have a person there — granted, the mother should be there, but the mother isn't always — in the morning when those kids get up. They roll out of bed and off to a breakfast club. There's someone there to talk to them, see if they got their homework done and find out who might be on the street, or whose family's breaking up, and just keeping a tab on what's going on there for those kids, maybe spending some time talking through, maybe then getting in touch with the school afterwards and saying, "Watch out for so-and-so because they haven't got a lunch today" or, you know, there's trouble in their family and reaching out, maybe making a dentist's appointment for them — one stable person there for those kids.

Anyway, those are our recommendations. We're very sorry we've lost our jobs. The children are hurting. We are worried. It's one thing to let programming go for kids for six months but quite another thing just to let them go. You see those kids down on the corner and hear that they've gone for parties, they've gone missing for the weekend and your heart goes out to them. I just wish we could be there for them, and I'm hoping when decisions are made where to put those dollars, you'll come back to us and ask for our input. Okay.

The Chair: Thank you, Mrs Harrington. We begin with the official opposition and we have four minutes per caucus.

Mr Bartolucci: Anie, Carolyn.

Ms Harrington: Anie.

Mr Bartolucci: Certainly I share almost everything with you very, very close to my heart as I was involved in Mr Laughren's community with the Whitefish Lake Indian Reserve and their children at my school, so I can appreciate how hard it is for you to see what happens when funding that serves a purpose is cut for no apparent purpose.

But let's talk about that for a little while because the Sudbury Native Friendship Centre experiences the same type of frustration that you do. They've had to cut excellent programs that actually save children. Could you maybe explain to the committee some of the programs that you've had profound success with but that you can't fund because of reduced funding?

Ms Harrington: Our Little Beavers was cancelled. It wasn't reduced; it was cancelled. It was excellent in that it brought kids together in a safe environment every night of the week, plus Saturdays and Sundays. It was a complete round of activity for them. Most kids, probably in Toronto too, urban kids, inner-city, haven't got the money for healthy recreation.

There's no money for YMCA or hockey or music lessons and so these kids rely on the local community centres for their activity, and because of that, you try to give them a complete round. You try to maybe give them cooking classes, something like baseball, so they learn socialization skills, getting along with each other. Dances of course they love, but the complete — what we call — four directions, even a reading circle, so you're looking

after perhaps a bit of their education, computers. Our children's programs really involved all those things.

But even more, we also went actively into the schools and did a lot of native awareness in the schools, inviting the teachers over for lunch. We'd go out public speaking and raise money and give scholarships at the end of the year, about \$1,000 worth of scholarships. Those are the ones that we've really lost.

Cutbacks have impacted not so much in Sault Ste Marie because what's happened is, as we get less and less money, we don't go out of town. Elliot Lake or Bruce Mines, all the places we used to service we don't go to any more in our court work programs, in our employment programs. Just like everybody else, I guess we try to save our own skin. Anyway, it's unfortunate for the outlying areas.

Mr Bartolucci: Two very, very quick questions because we're almost out of time, I'm sure.

The Chair: One minute.

Mr Bartolucci: One minute, good. Then maybe yes or no to both of these would be sufficient, Carolyn. We suggested that there be a minister responsible for children's affairs. Do you agree with that?

Ms Harrington: Yes.

Mr Bartolucci: Secondly — and I think it's important to get on the record — do you believe the Common Sense Revolution, the Agenda for Change for better business practices addresses the needs of the native community in Ontario?

Ms Harrington: No.

Mr Bartolucci: Thank you.

1700

The Chair: We now move to the NDP caucus.

Mr Tony Martin (Sault Ste Marie): Carolyn, I just want to thank you for taking the time out of what I know is a busy schedule to be with us here today and for sharing with us in your own inimitable way such a compelling story.

I know of your story — we worked together on a number of initiatives in the Sault — and of your tremendous commitment and interest in the lives of the people you work with, the families and the children. You raise a whole raft of issues here today and put them on the table.

I wish we had more time to ask questions about them, but picking one out of all of that I guess I want to focus on the comment you made about no one asking the impact question. That seems to be a characteristic of this government over the last year now that we've seen just tremendous change, tremendous cuts in programs and levels of resources to programs, and yet no documentation to show the impact and no one's asking the impact question.

You went out and did that and you told us today that since last year and the disappearance of your program which was a community support program to families, the Little Beavers program in our community, and the reduction of the resource being taken home by the most vulnerable in our community of 21.6% which ultimately affects families and kids has, as you have said, because you've talked to principals and parents and others — kids are hungry, more kids are moving because their families

are moving because they can no longer afford the housing they used to be able to afford because their resources have diminished. There's an increase in the agitation level of kids in school and, I would suggest, probably violence in the school yard and in the community. You said young offenders are reoffending more often.

Given that result and some of the very practical issues that we have to deal with here — you talk about the breakfast program and how important that is, and to give credit where it's due, there was some money put into child nutrition in the budget that was just presented. But when you take away the kinds of programs that support families and children, like Little Beavers and your program, and take 21% out of the take-home pay, I say, of the poorest in our community, if you had a choice to make, which one would you make?

Ms Harrington: Which program would I put back in?

Mr Martin: Yes. Would you put more money into nutrition programs that feed kids in schools and at places like the Indian friendship centre or would you reinstate your program Little Beavers and give back the 21.6% to families so they can feed their kids at home?

Ms Harrington: I think I'd have it go directly to the kids, to the nutrition programs; not just nutrition, that's only one aspect of health. If there were ways to get those kids to camp — so direct services to children, I think. It would be nice if they came through a central program that focuses on children in each community organization because, as I mentioned, we do like to attract all the volunteers we can get, but I think whatever gives directly to the children is of most impact. So often you find programs that give a good salary to the worker and wonderful benefits and then you say, "And what have you got for your program?" and there's no money left for the clients. I think that's a real fear here, to cut whatever it is to the bone. Kids don't mind eating in a basement. We have a thing against it. We like everything pink and green and everything. They don't care. They would rather have an old place where they can bounce a ball without everybody worrying about what's going to break.

The costs don't have to be high if services go directly to them in food, in transportation, going places, going to Science North, going to Toronto, like the kids out here standing on the steps having their picture taken. So actual things for kids and maybe just one person to oversee and be there and monitor so they have somebody. Hugs are good too, you know.

The Chair: Thank you. We must move on now to the government side.

Mrs Julia Munro (Durham-York): I thank you very much and certainly appreciate the concerns that you've raised today. There are a couple of questions, though, that I'd just like to ask you so we have a better picture here. What would have been the original budget of the friendship centre a year ago?

Ms Harrington: There are only a few programs that are children-based. One was \$57,000 for Little Beavers; mine was \$48,000 for community development.

Mrs Munro: Would you have been the only staff person who would be responsible for children's programs?

Ms Harrington: The two of us, yes.

Mrs Munro: Oh, there are two of you.

Ms Harrington: One person, yes. One person in Little Beavers, and I was in community development. There are two of us.

Mrs Munro: And how many children? You mentioned for the \$57,000 that there were 100 children served?

Ms Harrington: I'd say on a daily basis there aren't; there may be 35 or 40. But you put on a dance, you have a baseball tournament or something, and then they all come out. Summer camp brings them all too.

Mrs Munro: Oh, sure. You mentioned when you were describing this program, did you operate it every day? Was that the point you made?

Ms Harrington: Yes.

Mrs Munro: So it was an after-school program for children?

Ms Harrington: Yes. We had the breakfast in the morning. Yes, they come after school and in the evenings as well. That was the children; that's the Little Beavers. I was community development and I did more of the going into the schools and speaking and developing programs — not just children in community development, I tried to develop other things too.

Mrs Munro: Okay. Now obviously, if you were having 30 or 40 children show up at a time, you'd have to have a volunteer component?

Ms Harrington: Yes, we do.

Mrs Munro: Roughly what would be the volunteer component in comparison to you as the staff person?

Ms Harrington: We usually have a parent and we usually have a couple of placements from the school — co-op students.

Mrs Munro: You mentioned the breakfast program; are you aware of the commitment that we have made to breakfast programs in the province?

Ms Harrington: Yes. That's why I'm stressing it. I think it's very important, and I commend you and I hope you continue it.

Mrs Munro: Thank you very much. I guess my question to you is the way in which your breakfast program has operated, and perhaps you could give us some indication of the way in which that was funded and how it has operated for you.

Ms Harrington: We've been running for several years. We started with — what is it? — council on social justice or something health-related several years ago, anyway, and that's where we started. We started running out and we've gone to the community for funding, and even had little jars sitting around in bars and things to get money. We have done Canadian Living; we got \$500 there, and now — what is that called? — Ontario —

Mrs Pupatello: Social development.

Ms Harrington: Yes. We have \$10,000 for that for the year.

Mrs Munro: Now, that requires then that you have to build a community component to it, doesn't it?

Ms Harrington: Yes, we have.

Mrs Munro: And obviously you've been able to meet that community component?

Ms Harrington: Yes.

Mrs Munro: I was just curious to know how it was working for you seeing you've established obviously some good links within your own community of support.

Ms Harrington: Yes. I think as long as there's a paid staff person there who is accountable, that you can attract volunteers. It's very difficult to attract school placements unless you have a supervisor there. You need a paid staff person, and that's what we've been able to do with the breakfast program. You can use it as an anchor.

Mrs Munro: Thank you.

The Chair: Thank you very much, Ms Harrington. Thank you for coming all the way here to testify before us. If you would like to share any statistics — I believe you may have the address of the committee — you could send it to the clerk of this committee. If you don't have the address, then just talk to anyone of us in a few moments and we'll give you that address. But thank you kindly for coming.

Ms Harrington: Thank you.

The Chair: That was our last witness for today. Is there any other business? If there is none, then this committee will stand adjourned until Monday next, June 17 at 3:30 in this very place. Thank you.

The committee adjourned at 1710.

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*Smith, Bruce (Middlesex PC)

Wildman, Bud (Algoma ND)

**In attendance / présents*

Substitutions present / Membres remplaçants présents:

Bartolucci, Rick (Sudbury L) for Mr Gerretsen

Cooke, David S. (Windsor-Riverside ND) for Mr Wildman

Froese, Tom (St Catharines-Brock PC) for Mr Pettit

Pupatello, Sandra (Windsor-Sandwich L) for Mr Gravelle

Ross, Lillian (Hamilton West / -Ouest PC) for Mrs Johns

Wettlaufer, Wayne (Kitchener PC) for Mr Jordan

Clerk / Greffière: Lynn Mellor

Staff / Personnel: Ted Glenn, research officer, Legislative Research Service

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**Legislative Assembly
of Ontario**

First Session, 36th Parliament

**Assemblée législative
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Première session, 36^e législature

**Official Report
of Debates
(Hansard)**

Monday 17 June 1996

**Journal
des débats
(Hansard)**

Lundi 17 juin 1996

**Standing committee on
social development**

**Comité permanent des
affaires sociales**

Children's services

Services à l'enfance



Chair: Richard Patten
Clerk: Lynn Mellor

Président : Richard Patten
Greffière : Lynn Mellor

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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
SOCIAL DEVELOPMENTCOMITÉ PERMANENT DES
AFFAIRES SOCIALES

Monday 17 June 1996

Lundi 17 juin 1996

The committee met at 1544 in room 151.

CHILDREN'S SERVICES

Consideration of the designated matter pursuant to standing order 125 relating to the impact of the Conservative government funding cuts on children and children's services in the province of Ontario.

ONTARIO COALITION
FOR BETTER CHILD CARE

The Chair (Mr Richard Patten): I'd like to call our first witness this afternoon, Kelly Massaro-Joblin, a representative of the executive of the Ontario Coalition for Better Child Care. Welcome to our hearings. We have approximately half an hour. You can choose to divide up the time between your comments and questions from members or use the whole time as you see fit in terms of your presentation. Welcome and thank you for joining us.

Ms Kelly Massaro-Joblin: Thank you. The north has been traditionally underserved in a lot of areas, especially child care services, although we have seen some expansion in child care services in the aboriginal community and the new schools initiative. Since then, however, steady improvements have fallen.

When Jobs Ontario child care subsidies were dropped, out of 212 spaces in the northwest 80 were rolled over to regular subsidized spots and 132 spaces were lost. Many families were forced to take their children out of licensed child care as they no longer qualified for subsidy. This also left many vacant spaces in licensed child care facilities and left programs running at a deficit as full-fee-paying parents were hard to attract due to the high cost of child care.

The waiting lists continue for subsidized child care and there are few, if any, child care programs that can accommodate them. This is not due to the fact that the child care facilities are full; it is due to the fact the child care programs have limited subsidized spaces. The two centres I work at have the licensed capacity to provide child care for 106 children. Out of that total, 25 spaces are subsidized spaces. This represents approximately 24% of the children using our services. This is typical in our area for non-profit, licensed child care programs.

The money for the new schools initiative being dropped has also hurt our area. One of the child care programs that started with this initiative and has facilities for it in a new school has no operating dollars to open the facility. This program has another child care facility in a brand-new school which is in a rural area and has been challenged with high rent costs, cleaning costs and keeping its spaces full due to the number of seasonal

workers. They have been forced to make a choice to close one centre to have the operating dollars for the other centre. This has left the rural community without a child care facility due to the fact there are no operating dollars to keep it running. This centre was used for a variety of programs. It served as a resource centre for families, caregivers and people in the community. It is a shame to see a brand-new facility shut down.

There are also increasing problems with school-based child care facilities. The cost incurred by these programs due to the rent, custodial services and other related costs the school board is charging is outrageous. If a child care program wants to provide child care services in the summer, the rent can go as high as \$4,000 per month. This has left programs no choice but to close the facilities during the summer months, leaving parents to look for alternative care for two months. It is not the child care programs that want to cause inconvenience, but they are forced to or they would need to charge astronomical fees which families could not afford.

The integrated programs in Thunder Bay have been continually attacked. There are approximately six integrated programs that exist and very long waiting lists for child care. There has been no expansion in this area for many years and it is a much-needed service.

The children I've had the privilege to work with who came into our care not able to communicate with those around them and then being able to interact with their peers are incredible. I remember one parent of an autistic child writing a long letter of appreciation to all the staff and in it saying, "Thank you for giving me back my child." This child was three years old and wasn't able to look at anyone or show any kind of acknowledgement. She's now six years old and is a very affectionate and loving child. She interacts with her peers and will be entering grade 1 in September. This is only one of many successful stories.

Child care programs act as an extended family. Not only do they positively influence a child's development and learning, but also they provide support and resources to parents. Many of our programs offer workshops and presentations to all parents to help them feel confident in their role as parents and give them specific help in areas they may be experiencing difficulty in.

1550

When there was talk of a voucher system replacing subsidized child care as we know it and the wage subsidy grant being cut, our community rallied 300 people to a local school gymnasium to look at the impact of these cuts and how we as a community could stop this from happening. Many parents, educators and concerned citizens brought forth their concerns. To make this rally

happen, donations were sent in by families and child care programs to advertise the event, and other business people in the community donated things like the sound system we used for the evening.

The reality of higher fees to parents if further cuts were made led many parents to explain that they could not afford to work and would not jeopardize the quality care their children were receiving by putting them in unlicensed care. There were questions on society's priorities, and if we truly saw them as a priority, we would invest in them now and for the future. One parent explained that she enjoyed her life and job knowing that her child was well taken care of. The most important issue to all parents was their children's wellbeing. Another excellent statement by a parent was: "We seek out a lawyer for legal advice, we look for an accountant when we need financial advice or a doctor when we need medical attention. Why then should we seek out anything less than quality, licensed, non-profit child care for our children where there are trained early childhood educators to provide developmentally appropriate programs?"

In the northwest, non-profit child care centres depend on various types of subsidies from the provincial government, including wage subsidies, pay equity, program development dollars, capital funding for new projects and parent subsidies. So far, the government has eliminated all these supports with the exception of wage subsidies and parent subsidies. Now the government is proposing to even the playing field by giving government dollars to for-profit child care centres. We in the north feel that direct government funding, including wage enhancement grants and other grants and parent subsidies, should be directed to licensed, non-profit child care services. The provincial government has a responsibility to ensure that the investment of public funds is placed in child care practices that meet government standards for early childhood education.

We do not recommend government funding of unlicensed, unregulated child care, either directly or through assistance with parents' fees for unlicensed care. We support government funding for resource centres, which in turn provide support for parents and families, both unlicensed and licensed private home child care providers and other members of the community.

There needs to be a recognition on the government's part that Ontario families have changed. Child care services must be more accessible and affordable for all families. Targeting those most in need, either financially or otherwise, limits the program's ability to build a community of people naturally helping each other. Segregating services does not provide the natural role modelling and supports parents can provide to each other. Also, when staff become the only resource to high-needs families, the risk of staff burnout and high staff turnover jeopardizes the quality and viability of the service.

A system that targets all funding to the very poor will be more dependent on government funding and is expensive to operate. A more effective solution would be to provide assistance to families based on family income. A mix of full-fee, partially subsidized and fully subsidized families allows more users access and potentially lowers the cost to government for subsidies. If the subsidy

dollars for one space were shared among five or six families who could afford the remaining fees, more non-government money would flow into the system.

We support a sliding fee scale based on family income. Governments have been able to create other sliding scales that could be used as a model for a sliding fee scale for child care. This type of system would encourage more people who can financially contribute to access licensed child care.

In concluding my presentation today, I urge you to review our vision and to listen to the families, early childhood educators and the children themselves to get the vision needed for a successful child care system. Thank you.

Mrs Sandra Papatello (Windsor-Sandwich): Hi. Thanks for travelling down to visit with us. We had a great opportunity to speak when I was in Thunder Bay, and I appreciated that then as well. You have a very active community in the area of child care, which seems very required these days as well.

I wanted you to comment. I noted with interest your story of the autistic child. Tell me what you see as the greatest downfall when you cut child care in this way, in particular for children at risk. What is the outcome in terms of how much government money will be spent when you don't have early detection for children at risk?

Ms Massaro-Joblin: Early intervention is one of the most important parts of early childhood education. From research that I've read, they say a dollar spent in the early years is \$7 saved in the years to come.

Mrs Papatello: Potentially, what would have happened to that autistic child had she not entered a school and not had ECE?

Ms Massaro-Joblin: She might have had to stay in the segregated setting, as opposed to being integrated into her community school and needing less support and fewer resources as far as one on one with — we call them SERTs, who are assistants to the teacher.

Mrs Papatello: Would you say that the expense of government is then higher because you haven't intervened early by providing services?

Ms Massaro-Joblin: Definitely. There's a much lesser cost, because as the child gets older, then their needs will be met through the school system, which will then of course be a higher cost.

Mrs Papatello: The government has offered, almost as an excuse, that most parents send their children to unregulated day care, so what's the big deal? What do you think the big deal is?

Ms Massaro-Joblin: I think, first of all, it's not a parent's choice to do that. From my experience working with parents, the only reason they choose unregulated child care is because they can't afford the price of licensed child care.

Mrs Papatello: Are you thinking that unregulated care is terrible?

Ms Massaro-Joblin: In our area, it's not desired. Most people, if they had the choice, would choose licensed child care if subsidies were available to them. Right now, really the only people who qualify in our area are the very poor. Middle-income people would not qualify.

Mrs Papatello: How do you address the argument that the government's put forward that the private sector in

child care has been badly treated over the years and all of the changes made would take money from the non-profit and hand it over to the private, or whatever they're going to do, because they've been badly treated? Our argument to that has been that government money needs to be accountable and you need to have a hand on the outcome when you're spending government money, and you have much less of a hand when you turn government money over to private business.

That's really been the idea, that when you're dealing with children, we're far less interested in the bottom line than we are in high-quality child care. But that nevertheless has been the idea. The private sector has been badly treated, and so the review and revisit of all of these subsidies to non-profit the government really has seen as inappropriate. What would happen to the child care centres in your area when you start taking all of that funding? What happens to your staff, for example?

Ms Massaro-Joblin: We only have one for-profit centre in Thunder Bay and that is out of at least 15 to 20 centres. We are not in favour of for-profit, because of the accountability factor. With non-profit, as you mentioned, the parents participate on a board level, they make decisions around the care that's provided for their children, as well as where the money's spent. The money is not put into their pockets; it's put into the operations of the facilities to provide better care for the children.

Mrs Papatello: The government has argued that you would only have one because the private sector has been so unfairly treated. What is happening to your staff in terms of high turnover etc because of the change? What does that do in terms of child care?

Ms Massaro-Joblin: First of all, the work environment would be different if we went to commercial centres. In our area, at the one commercial or for-profit centre that we have, the staff are paid less. There are no benefits. They have no sick days.

Mrs Papatello: What does that mean to the children?

Ms Massaro-Joblin: The quality of work life would definitely affect how the staff interact with the children. They're doing minimal amounts of care and just custodial types of care.

1600

Mr Michael Gravelle (Port Arthur): Kelly, welcome. It's great that you were able to get down from Thunder Bay, and we're really glad to have your perspective. Certainly as my colleague Ms Papatello pointed out, the child care community in our area is very strong and it certainly was a great display last fall in terms of our concern about the proposed voucher system that was being talked about.

I just want to ask you one quick thing. In terms of the child care review that my colleague across here, Ms Ecker, is working on, has northwestern Ontario had an opportunity and has Thunder Bay specifically had a chance to put their input to that committee?

Ms Massaro-Joblin: I believe there have been submissions sent in. We haven't actually met with Ms Ecker, but there have been submissions forwarded.

Mr Gravelle: You've got some great ideas. Thank you very much. It's good to have you here.

Ms Massaro-Joblin: Thank you.

Mr Tony Martin (Sault Ste Marie): I want to echo the sentiments of my colleagues here that it is good that you've come down. It's good that we hear first hand from folks in northern Ontario re the impact that decisions that are being made by the present government are having on all of us who live and work in that part of this wonderful province.

You certainly in a very clear and concise manner lay out the situation as it is and some of the challenges that we face up there. I know that in my own community there are absolutely no for-profit day care facilities. They're all not-for-profit, and they actually function quite well, and a lot of people over the last few years have jumped in to make them even better because they're not-for-profit. There's a greater sense of ownership by the community in those facilities. A couple of them are in fact co-op, and we have no difficulty getting the parents to come and participate.

I also was interested in your reference to the integrated programs. I note that we have one of those. You say that you have approximately six integrated programs with very long waiting lists. We have one in Sault Ste Marie that's struggling right now because money has been pulled from the Community Living Algoma organization that sponsored that, so the parents actually have come to the rescue because they didn't want to lose it. They saw it as too valuable for them, for their children, so they have pooled their resources with the resources of Community Living Algoma to try and keep it going.

Maybe you could just for me, and perhaps for the benefit of the committee, talk a bit more about the integrated programs in Thunder Bay and the difficulty. You said they already had very long waiting lists. What's the situation now?

Ms Massaro-Joblin: They continue to do so. We have a newly founded group called Communities Together for Children and they're looking at a central referral waiting list for families with special-needs children. From that waiting list we would prioritize the needs of these children so we can accommodate them in more centres, meaning looking at more inclusive child care so that there aren't only six integrated centres, but all centres could accommodate children with high needs by offering what we call resource consultants who would work between centres and have a caseload of maybe five centres where they would offer support and resources to those programs. But we are running into a difficulty financially of setting this up because we don't have the funding to provide the support and resources if we're to expand what we presently have as far as integration.

Mr Martin: Ms Papatello mentioned earlier that Ms Ecker is working on a new framework within which day care will be delivered in the province, and I know she will have some interest in the integrated portion of that, making sure that children who are challenged in particular ways in all the communities across the province will be facing — or what opportunity they will have or not have.

A move to for-profit as opposed to not-for-profit re the whole question of integration and the needs of these special-needs kids: How do you think that's going to shake out?

Ms Massaro-Joblin: I think it'll work well. Staff training is very important, and if dollars aren't being spent for professional development — a big chunk of most non-profit centres is to keep their staff well educated, well trained so they can deal with these situations. In my experience on a budget line, for-profit centres, in order to make a profit, have to cut somewhere and usually it's professional development.

Mrs Janet Ecker (Durham West): Thank you very much, Kelly, for coming down. I was indeed in Thunder Bay myself and got to visit many centres there and have certainly heard and received many submissions from organizations and individuals in the north. I would have liked to have gone to your community meeting that you had to assure the parents that many of the claims and rumours that were being circulated last year were not true. It was unfortunate, but the only people who were talking about vouchers seemed to be certain advocacy groups, joined by some members of the opposition. It certainly wasn't something the government was talking about doing.

Mrs Pupatello: It was your memo.

Mrs Ecker: No, it wasn't.

Mrs Pupatello: It was your document.

Mrs Ecker: No, it wasn't.

I've been a little concerned that some of the claims that have been made about how we were going to wipe out child care and turn it into vouchers or wipe out subsidies or do all this kind of thing are not accurate, and I have certainly been quite frustrated about the concern and angst that has been created within many parents.

One of the things that I just wanted to say too is that the misinformation that continues to be floating around a little bit causes me some concern. We haven't scrapped pay equity. We're not planning on segregating services. There's currently now money that's going to the for-profit sector and it is certainly not our intent to wipe out one sector versus another sector. We have talked about restoring equity in the system, and that does not mean we're trying to somehow privatize or anything of that kind. Parents choose profit or non-profit or regulated or unregulated or home- or centre-based for many reasons and, as you say, in some circumstances it may well be an availability of choices; in some circumstances it may be affordability.

One of the things that I have found quite interesting is how many advocates of regulated care have at certain times in their child's life chosen unregulated home care because they believe at that time it works, as well as I've seen parents pay more for unregulated home care in communities where they could have had regulated, licensed care for less money. I think it's very hard to make any kinds of generalizations about what parents are doing out there, which is one of the reasons why I've certainly supported parental choice. I'm supporting parental choice as much as we can through the structure and through the application of resources.

I was interested in your comment about the family income, because this is something I've certainly heard, that we need to make the subsidy system much more flexible and a better reflection of need. Have you given any thought to how that might work best and what kinds

of family income? Are there other factors that perhaps should be factored in there, other than just strictly family income, that kind of thing, that might make the subsidy eligibility test better reflect the need of working individuals?

Ms Massaro-Joblin: In my submission I indicate how the group RSPs are presently done, looking at that type of a contribution towards child care. As far as what income level, I don't have those kinds of figures figured out, but I do support that. We need to involve more middle-income people and higher-income people into the licensed child care facilities so that, as I mentioned, less government dollars are being used to subsidize spaces.

Mr Jack Carroll (Chatham-Kent): A couple of questions, again on the sliding fee scale based on family income. You go on to say that, "This type of system would encourage more people who can financially contribute to access licensed child care." Are you basically saying that if you raise the price for people who can afford it, more of them will access it?

Ms Massaro-Joblin: No, that's not what I mean. What I mean is, we'd have a maximum. For instance, right now child care for a preschool child is \$27. That would be the maximum for someone who could afford 100% —

Mr Carroll: That's five or six families splitting the subsidy. You talk about five or six families splitting the subsidy so the government didn't have to split it.

Ms Massaro-Joblin: For instance, if somebody could afford \$25, then the government would pay \$2, as opposed to \$27. That's what I meant by that.

1610

Mr Carroll: I've got three grandchildren, and they're in unregulated child care because that's what my daughter chooses to put them into, as do most of her friends and most of the people I know. What is the hangup with unregulated child care? I don't understand that hangup.

Ms Massaro-Joblin: Just the word itself, "unregulated"; nobody's monitoring it. There are lots of things that we have to follow in the Day Nurseries Act, and with unregulated care that doesn't happen; there's nobody watching over them.

Mr Carroll: So if the government isn't watching it, it's necessarily not good. Is that what you're saying?

Ms Massaro-Joblin: No, but for instance one thing around the ratio issue — these people can have 13 children in their house at one time.

Mrs Ecker: It's against the law. No, they can't.

Ms Massaro-Joblin: Well, in our area it still happens.

Mrs Ecker: Have you reported that to the ministry?

Ms Massaro-Joblin: We have been reporting, yes.

Mrs Ecker: If it hasn't been followed up, Mr Chair, I would like —

Ms Massaro-Joblin: Excuse me, Janet, but there are a lot of people we don't catch either.

Mrs Ecker: It's against the law.

Mr Rick Bartolucci (Sudbury): On a point of order, Mr Chair: I don't think the witness should be attacked like this. I think she deserves an apology. She was given a story by Ms Ecker and all of a sudden she's attacked by Ms Ecker. I would suggest that she deserves —

Mrs Ecker: Ms Ecker did not attack her. Ms Ecker said that what she was saying was against the law.

Mr Bartolucci: You verbally attacked her. You were very rude to her.

Mrs Ecker: This is an organization that knows the law very well, Mr Bartolucci.

The Chair: Excuse me, Mr Carroll has the floor. You have 30 seconds.

Mr Bartolucci: This is absolute ignorance. It's unbelievable.

Mrs Pupatello: Tell them how many inspectors there are in the north.

Ms Massaro-Joblin: We only have one for the whole northwest, just to let you know that — just one.

Mrs Pupatello: One inspector.

Mr Carroll: I understand what you're saying about the sliding scale thing. If that would work, if you would have people with money subsidizing people who don't have enough money, then why can't you just —

Ms Massaro-Joblin: It's making it more affordable for everyone, so people with three children would send their children to licensed child care.

Mr Carroll: Why wouldn't you just put that program into effect without the government? Why can't you just say to people with money, "Look, you come and help us pay for the people without money"? Why do you need the government involved in that?

Ms Massaro-Joblin: For one thing, not everybody who has money uses licensed child care. They might not even have children. We can't depend on that.

The Chair: Ms Massaro-Joblin, thank you very much for coming all this way. It was obviously a stimulating and very thoughtful presentation.

CHILD CARE COUNCIL OF OTTAWA-CARLETON

The Chair: The next witness is Ms Kathy Yach from the Child Care Council of Ottawa-Carleton, from a wonderful area of the province. We welcome you today, Kathy.

Ms Kathy Yach: As new members of the standing committee on social development, I applaud your encouragement of open and direct communication with the Ottawa-Carleton child care community as you gather information to make recommendations that will affect all children in the province of Ontario in the future. I urge you to listen to those of us who deliver programs and their effects on young children.

The child care council membership consists of 45 voting members from a variety of organizations, including day care, private home care, resource centres, special-needs programs, independent caregivers, private operators, recreation, school boards, colleges, unions and universities. On behalf of children and families, the child care council is mandated to provide a structure to promote collaboration and responsibility for the development and delivery of high-quality child care services in Ottawa-Carleton. Within the mission and guiding principles established for it, the child care council will provide the opportunity for a collective voice to be an advisory to the funders and political process in carrying out their mandates.

Child care services have been available in the Ottawa-Carleton area for over 50 years, with approximately 180

programs across the region and a mandate to serve approximately 7,200 subsidized children. I want to draw to your attention the fact that, as you know, the Ottawa Board of Education was a forerunner in the Ottawa-Carleton region for the establishment of day cares and after-4 programs in schools. They were also instrumental in lobbying the previous government to change the legislation that enabled this to happen.

We strongly support child care centres in schools and we're very disappointed that this government failed to have the wisdom to keep child care centres mandatory in schools. Several years ago, provincial direction and extensive community preschool review of services for children identified the need to develop centralized support services to facilitate the successful integration of handicapped children in the licensed care system. The mandate was given to Andrew Fleck Child Care Services. The vision of the community was to develop support services that are flexible and responsive to the changing needs of children, parents and the child care community. The move to access licensed child care in the Ottawa-Carleton region has been parent-driven and fully embraced by the child care system. To date, over 181 children who have special needs have been supported in 107 licensed child care programs in Ottawa-Carleton.

The child care council recommends that you maintain the necessary funds for this support program. It is critical for children, their families and the community so that the focus continues to be on the potential versus the disabilities of children. Children are integrated into the neighbourhood child care centre from the start so that all children can learn and develop together.

Research on early schooling indicates that those who start younger in quality preschool programs tend to perform better in later years, particularly in the measures of general ability, language and cognitive development, as well as reading and math performance. As community leaders tasked with helping to form the leaders of tomorrow, we must be mindful of this window of opportunity to help these children to be the best they can.

Since the 1960s, many research projects addressed the short- and long-term benefits of early childhood education. Some of these projects, such as the High/Scope Perry Preschool Study, have been under continuous scientific study for almost 30 years. This study, which gave preschool enrichment to high-risk children, proved that with early intervention employment was twice as good; high school completion was one-third higher; teenage pregnancies and crime were reduced by 40%; and drug use was substantially less. A dollar spent today saves \$7 on social services in future years.

No government or society should choose to be penny wise today to become pound foolish tomorrow. Since the recent rate reduction in social welfare payments to clients, there is a false illusion of an improved society. It takes no more than a glance at almost any daily newspaper to see the harsh reality of these cuts. There has been a reduction in caseloads for welfare workers in our society, but the reduction has been most devastating for single people in our society. Families are still on welfare and there's been an increase in school breakfast programs, food banks and the number of people who are no longer able to pay the rent and have been evicted.

Many parents in low-income families, indeed those parents in better economic situations, would prefer to stay at home, but economic necessity forces them to work. Affordable quality child care supports parents by reducing stress, breaking the welfare cycle and enabling work, training and education for parents.

This preventive measure also reduces the long-term costs of supporting individuals who have been helped to reach their fullest potential. "If a family with one child is on social assistance rather than in child care, it will cost an additional \$91,000 to our society because the mother on social assistance is not able to work and therefore not contributing to our economy." If fees are too high for the fee-paying parents, they are unable to work. Therefore, we strongly urge you to continue to fund child care so that parents can help themselves to break the poverty cycle.

The Liberal government promised in its red book to spend, when elected, \$720 million to create 150,000 child care spaces by 1998. The province would have had to match these funds. In December 1995, Lloyd Axworthy pledged \$630 million to expand and improve day care spaces; it didn't happen. Last week, Doug Young, the Minister of Human Resources, announced: "The money offered in December is gone. That's been gone since the proposal didn't fly." This is a breach of trust. The federal government must be made accountable for its promises. Children are our most important resource and must not be put at risk. Any government that opts to do so puts the future prosperity, growth and success of this community at grave risk.

I urge you at the next first ministers' conference to request the federal government to deliver its promise. The implications to our children and our whole society will be irreversible and will have a negative impact.

During the past year, the child care council has been very active with our local regional government in finding solutions to the issue of Jobs Ontario spaces. Participants in this group of community leaders strongly believe that if we lose the Jobs Ontario spaces, our system will slowly erode. The majority of families using the Jobs Ontario spaces are single-parent and low-income families trying desperately to get off FBA or welfare assistance. Also, many of the Jobs Ontario spaces were being used in day care programs in high schools and colleges, and these programs would be in jeopardy.

To maintain the Jobs Ontario spaces, the child care council supported a cut of 2.1% to each licensed program in the year 1996 and further agreed to work together with the region to find alternative solutions for the years in the near future.

The child care council then initiated a process to give long-term options to the province and the region which would address the provincial government's goals and ensure continued existence of a regulated, high-quality child care system. The options also addressed the need to make changes in the existing system to ensure that quality child care options can be afforded by both parents and taxpayers. Day care and private home care distributed a questionnaire seeking alternative suggestions to expand services to children and families. Workdays were held to establish principles in each group and then applied to the

resulting suggestions. These were then sent to Janet Ecker, MPP, who is heading up the child care review. They're attached to your appendix.

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Because we have been so successful in working together with our local regional government, we would like to urge the provincial government to allow us to continue to work cooperatively to find local solutions. If funding is to be cut, please block-fund to our local government so that we can find the solutions together.

If the government's intent is to re-engineer programs and services to build a better tomorrow, the licensed group care, private home care and integrated programs are, by definition, an essential part of these plans. We believe strongly that there must be minimum standards in place and these must be enforced by the local ministry office to ensure the quality and safety of children. As advocates and taxpayers, we are very concerned that programs for children be open and accountable.

There is no room for compromise. There is no room for the foolish error of failing to provide sound programs to the future leaders and taxpayers of Ontario.

We support early childhood educators staffing child care centres. We are concerned about the implications to children of allowing JK to be optional. It is an error that will return to haunt our province socially and financially in the years ahead. Instead of cutting JK, you should have considered making it possible to hire early childhood educators to replace teachers. There would have been cost savings to the boards of education.

Wage enhancement, available since 1987, has played a role in attracting and maintaining qualified staff to work with children. The wage enhancement represents up to 20% of early childhood educators' salaries. We recommend the allocation of funds for wage enhancement be forwarded to our local regional government so that we can work together to find appropriate distribution of funds.

The early years are the most important. For members of the standing committee on social development interested in pursuing more in-depth study of the effects of early childhood, I urge you to read Dr Fraser Mustard and Dr Paul Steinhauser's papers. These leading Ontario researchers clearly demonstrate the need to safeguard the quality in early years.

Children are our future. We must develop them to their potential. Please support programs that will enable this to happen.

Mr Martin: Thank you for coming forward and presenting today. You certainly are consistent with anybody I've spoken to and anybody I've heard from — not just during the tenure of this government and as we took some of the legislation we have in the last few months around the province — who say and who quantify with study and research the need for us to protect what we already have in the area of early childhood education and build on it, grow it and make it more accessible. The other thing that we hear loudly and clearly as we go along is the need to make the transition from day care to school as seamless as possible as well and to work in that direction.

I keep hearing, particularly from the government, in the past less than a year, that somehow that's not valu-

able any more, that that approach is suspect and that there's another way. You've mentioned a couple of people in here, Mustard and Steinhäuser, who clearly demonstrate the need to safeguard the quality. The Royal Commission on Learning made reference to that. Who's saying otherwise? Who out there of any stature, with any credibility in the field, is saying that we should be doing something different that you're aware of?

Ms Yach: No one I know of.

Mr Martin: There's nobody out there. What about this fellow who's coming before us at 4:30 today — maybe his name says it all, I'm not sure — Mark Genius?

Ms Yach: I don't know him.

Mr Martin: Do you know anything about him? Why is it that all of a sudden he is becoming the person who knows it all, who has all the answers, who knows better than the folks —

The Chair: Mr Martin, we will be hearing from him. He will be the subsequent speaker.

Mr Martin: I wanted her view, though, of this person who —

The Chair: She says she doesn't know him.

Mr Martin: You don't know him and you're not able to comment at all on his credentials? Do you know of his approach? Do you know that the government is putting a lot of faith and belief in what he has to offer and the views he's presenting?

Ms Yach: No, Mr Martin, but we were fortunate enough to have a round table with Janet Ecker in Ottawa, and she visited a number of programs. My main emphasis with all of you is to educate you, and hopefully in the end you'll make the right decisions. That's really what we're here for today. I don't want to comment on somebody else because I really don't know who they are. I don't know what they represent.

Mr Martin: Who belongs to the Child Care Council of Ottawa-Carleton? Who's part of that?

Ms Yach: If you look at the back, there's their winter newsletter and all the organizations are listed.

Mr Martin: Almost anybody who has an interest in —

Ms Yach: They're elected from their organization, though, Mr Martin.

Mr Martin: Yes, but almost every organization that has an interest in, that has a concern about, that wants the support —

Ms Yach: It's the largest representation of the early childhood education field in Ottawa, and we advise the regional government.

Mr Martin: They're supporting your brief today, all those people?

Ms Yach: I'm representing them.

Mrs Ecker: Thank you very much, Kathy, for coming down. I'm very pleased to see you again. As has been mentioned, I had an opportunity to not only have a round table meeting in Ottawa with a very strong child care community but also to see many of the actual facilities up in Ottawa, and much appreciate the work that's gone into the submission and the brief that has come forward.

One thing I would like to stress, since Mr Martin does not seem to be aware of it, is that the child care review has been trying very hard to meet with all the people in the child care field who have expertise and knowledge

and to assess and sift and use the advice and the expertise that's been brought forward to us, because it is a field where there is a diversity of opinion among parents, among child care educators, among providers out there in the field and among the research community. I think that's why we've been so clear about setting out the objectives we're trying to achieve with the review.

I think it's fair to mention too that the experience I had in Ottawa is one of the reasons why I personally have been very favourable to continued and enhanced municipal involvement in child care delivery and administration in the province. Many municipalities, Ottawa being one, certainly have demonstrated that they're quite prepared to make some tough choices, as they balance their priorities, to make sure that child care stays as a high priority.

There's one question I would like to ask you about, because you made an interesting suggestion on junior kindergarten, about using more early childhood educators within schools. I know this is something some school boards have tried to do. Some early childhood educator groups are certainly quite interested in trying to do that, and I know there's a lot more integration going on between kindergarten and child care which seems to be working very well. When I put that question to some teachers' federations that were at some other hearings we had, they reacted extremely negatively and said they weren't qualified and couldn't handle it, and "Don't you know they're only allowed to have so many kids in a day care centre; they couldn't possibly handle a classroom setting." Any comments on how we deal with that response from the teacher union leadership?

Ms Yach: Just to clarify something, in my old life I used to be a trustee on the Ottawa board and I was chair for two years, so I come from a background of knowing both sides. When I went on the Ottawa board 13 or 14 years ago I ran on the issue of child care, wanting it in schools, and felt very strongly that JK-SK should have ECE teaching. I can give you a whole gamut that's recorded in the minutes of me asking what type of equipment they had in the schools, in JK-SK, really realizing that there was no emphasis put on JK-SK, not in the school boards and not in the universities. If you went to Queen's University or any university, they were not doing that.

I'm not taking away from the teachers in the classroom, but what disturbed me in the last year was to see the government looking at getting rid of JK or making it optional to boards and realizing that boards of education are in a financial crunch, like all of us, and there are other ways of delivering service. In fact, I spoke to the chair of the Ottawa board, Linda Hunter, and said to her, "You should be looking at a pilot of having ECE do it."

I realize there are negotiations and that there's a lot of opposition to it, and I appreciate where the teachers' federations are coming from, but I could go back 10 or 15 years ago, where in fact they were thinking of ECE as teachers' aides. I think if you looked at it, you'll find there are many teachers in boards of education who may not even have as much training as ECE, because many of them went to normal school and for whatever reason never took their degree and were grandfathered and they don't have it. I used to fight this on floor of the Ottawa

board. If you gave the direction to the community colleges, I think it could be done.

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Mrs Pupatello: Thanks for coming down today. I too had an opportunity to see a number of programs in Ottawa. You tend to be leaders in a number of areas and find ways to make programs stay, especially in inner-city areas where they're really required.

Tell me what you think of the current discussion on disentanglement and what that has to do with the child care study. Does it throw all of the study on child care up in the air until the government decides who is delivering what service in each community?

Ms Yach: That's a good question. I don't know, Sandra. I feel like we've been studied to death sometimes.

Mrs Pupatello: I agree with you.

Ms Yach: I don't mean that negatively. I think sometimes we have to go through reviews. I just wonder where it will all end.

Mrs Pupatello: It's surprising that it would take months and months to review when we kind of know a system.

Ms Yach: As far as the day care review, I think we were pleased that Janet gave us time, that we were all able to respond, and we all wanted to respond.

Mrs Pupatello: You know the outcome has been delayed again?

Ms Yach: I didn't know that; I'm sorry.

Mrs Ecker: It has? That's interesting?

Mrs Pupatello: Tell me something: Are you aware that some school systems in Ontario have ECEs in the JK program?

Ms Yach: Yes. That's with a minister's letter, right?

Mrs Pupatello: We have a teacher, for example, in Windsor who works with ECEs in the same classroom.

Ms Yach: My recommendation would be that the ECE be the teachers.

Mrs Pupatello: I'm just suggesting there are school boards that have already come a great way to reduce costs and still be allowed the option of maintaining JK where possible.

Ms Yach: If I were to look in our own centre, we have staff on site who have their early childhood degree from Ryerson and have their ECE from colleges, so there are many ECE people who have degrees. I think there's been a barrier of trying to understand that.

Mrs Pupatello: You see that it's quite negative in terms of going backwards and not allowing JK to come into full force. Before even the last term of government mandated JK to be phased in over a period of time as a requirement, something like 80% of boards were moving towards introducing JK because they all saw the validity of it, and at that time they weren't being forced; so even when they were being forced they were moving towards it anyway because they recognized how valuable it was as a service to children.

You were here during the last presentation. Tell me what you see as the greatest negative effect of not having early detection for children at risk when you don't make the space available for children to get into a system to be identified.

Ms Yach: I'm going to speak personally here. I'm a good friend of David Weikert, who did the Perry preschool study, and years ago I spent down in Ypsilanti, Michigan. It interests me because as time has progressed, his input has determined that we really don't know the long-term effects. When he first started this study he thought he would just raise the IQ. That went by the wayside and eventually he realized that he changed the children's lives and their directions.

I can remember being down there a couple of years ago and his comment was, as they had been studying them, the impact of them as parents was great, which was something they never thought of when they started the study. I think that we don't know. I can give you my personal feelings but I think the impact is long-term. It's a long-term in teenage pregnancies; it's long-term in drug abuse. I just wish we had studies in Ontario like what's happened in Ypsilanti. I wish we had tracked kids for 35 years.

Mrs Pupatello: Yes. It's been quoted so extensively that it really does have a big difference. When the government has an economic agenda like the one it has, it tends to lose sight of the outcome of cutting areas like early childhood detection for children at risk. Specifically, how do you answer a government that says it has an economic agenda and it's going to cut areas that clearly will help children, particularly those with special needs like the autistic child we heard reference to earlier, that it will cost the government more not to intervene at an earlier date?

Ms Yach: Sandra, as I said earlier, I'm here to educate and to ask people to look at studies and to make decisions. You had asked the earlier presenter on unregulated. Well, part of our child care council is; we have people who come from the unregulated sector and we're trying to find solutions together.

The Chair: Thank you very much for coming all this way from the Ottawa area. We appreciate your presentation and look forward to seeing you at home.

NATIONAL FOUNDATION FOR FAMILY RESEARCH AND EDUCATION

The Chair: The National Foundation for Family Research and Education; Mr Genuis, would you join us. I gather you've come a long way.

Dr Mark Genuis: Yes, sir, I have.

The Chair: Welcome to our committee hearing. We have up to half an hour. You can break up the time with your presentation and time for members' questions as you see fit.

Dr Genuis: Thank you for having me here today. My name is Dr Mark Genuis. There must be a misspelling on Mr Martin's form.

I'm the founder and executive director of the National Foundation for Family Research and Education. My objective today will be to speak for approximately 10 minutes. You've likely had a long day, and I will try to keep my comments brief and to the point and then open up the floor for as many questions as possible.

Just a little bit about our organization, seeing that it seems we're not very well known: We are an organiza-

tion that is charitable but otherwise private. We have the sole goal of studying and supporting families in Canada, which means that we conduct and gather academic research throughout the world on specific issues regarding families, then we take that information and disseminate it. Instead of disseminating it solely within the academic community, we try to bring it to communities and individuals, to corporations where appropriate and where they request it and to governments where appropriate and where it's requested.

That is what brings me here today and that's a bit about us. We have a board of directors that spans right now from Toronto to Alberta. We have an academic advisory council that critiques everything we do through a blind peer review process. This advisory council spans four countries, from Cape Breton to Vancouver in Canada and three other countries around the world. We're now speaking with people in two other countries. There's a very strict adherence to the academic component so as to bring you information that is comprehensive, sophisticated and on the cutting edge. I appreciate your time.

I will first address a statement from Mr Martin and then get into the information, which I'll break up into a few different parts. Mr Martin said that anybody who has an interest in the child care area is saying one thing, and it should be noted that NFFRE has absolutely no interest in the child care area. We do not stand to benefit or fall down on your cuts or anyone else's cuts. If you put money into child care or go any route, we do not stand to gain or benefit from any of this. This is us coming to you strictly as a neutral party sharing the latest, most comprehensive research information with you, and that is it.

First of all I'd like to begin with some trends. Statistics Canada tells us that the suicide rate for Ontario children over the past 40 years has increased by 434%. The numbers are not huge from one to nine, but our question would be, when do we begin paying attention to the trends? In the teens the rate has gone up 256%, and this is after a population increase is factored in, so it has nothing to do with population rises. As you heard I believe on December 11 or 12, Canada is now third for youth suicide rates in the industrialized world. For adults, the rate has gone up 89%.

Youth violent crime in Canada has gone up in the past 10 years by 124%. This is violent crime only, and that approximately doubles the rate of adult violent crime. Drug-related crime in Canada has gone up 83% in the past few years and recidivism has stayed steady at about 45%. What's fascinating about that number is that 60% of those recidivists, or repeat offenders, had three or more prior convictions. What does that tell us? That tells us that after children reach a certain level, and I say this humbly as a counselling psychologist, we are not extremely effective in getting to them. If we can prevent some of these things, we'd be far ahead of the game.

Canadian business — I just met with a businessman here in Toronto — now spends approximately \$12 billion a year on personal and stress leave. Some of it may be, but not all of it is just because of stress on the job. My point is, when we see some of these consistent trends in various areas of life, it is incumbent upon us, it's essen-

tial for us to begin looking at solutions to prevent these difficulties from occurring in the first place.

I think that most of the people coming to you are trying to focus on that same direction, but I'm going to discuss the research information with you with that focus of preventing: What is best for these young children? And I'm going to focus on the question of the impact of removing 14,000 child care spaces from the province of Ontario.

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The first area of research that I'll address is that of attachment, or bonding. Quickly, what a bond is to a child is the security that a child feels with her or his parents. It's the likelihood that a child, when in need, will retreat to her or his parents and then feel taken care of and safe and secure.

There's been a tremendous amount of research in this area over the past 40 or 50 years. I was fortunate enough to conduct a study on this and publish it in 1994. It served as my doctoral dissertation, but parts of it have been published internationally, parts have been presented at the Canadian Psychological Association national conference in 1994, and there have been other publications since that time.

What does this information tell us? This information tells us that a secure childhood bond or attachment to parents is a direct and important, in fact central, element in developing healthy, happy and productive adolescents. Insecure bonds to parents, however, are a direct and some would argue causal influence on the production of clinical levels of emotional problems, behavioural problems, illnesses, and including youth crime, in adolescence. There doesn't seem to be a whole tremendous amount of grey area. When the bond is secure, a direct line to health, happiness and productivity; when it's insecure, a direct line to difficulties.

So we have to ask ourselves, how does this bond develop? What helps this bond develop securely and what helps it develop insecurely? In this area we reach what has up till now been a very controversial area of research. Not surprisingly, we and others have found that various child abuses contain within them a risk. Neglect contains within it a risk. Lack of parental involvement in children's lives contains within it a risk. One other area, though, that has been found recently is regular non-parental care.

Before I get into explaining that finding, I want to tell you a little bit about research design. You will no doubt have heard many individual studies discussed. You will no doubt have heard many literature or narrative reviews being discussed. These have traditionally been very, very important in the social sciences because that's all that we've had. The difficulty is that narrative reviews are inherently biased, particularly in contentious areas. Regardless of what my bias is or how hard the researcher tries, their bias is going to come out in doing a narrative review.

Various scientists throughout the past 20 years have come up with a technique and developed and validated a technique we call meta-analysis. Meta-cognition is thinking about thinking; meta-analysis is analysis of analysis. It's a method of removing the researcher's bias.

It's a method of taking the information in a particular area, standardizing it and examining it without the bias of the researcher. The result, quite frankly, is that a meta-analysis is more powerful and more valid than any individual study, than any group of studies and any literature review in any area of study.

Medicine now is heavily reliant on the use of meta-analysis in looking at the validity of techniques and so forth to see what really works. It is an increasingly well used area of research.

What are the results? We also, in the area of non-parental care, are fortunate in psychology to have three such meta-analyses conducted. Not one; we have three done. Before I go into them, though, I'd just like to take a second and tell you about some limitations. We should always understand that no science is perfect and that there are some limitations to the information.

The first one is that a large percentage of the participants studied throughout the world in the area of non-parental care are those within the mid-socioeconomic range. All ranges have been studied, without question, but a large percentage and disproportionate percentage has been in the middle range.

Secondly, the majority, about 70%, of the studies have not directly focused on quality of care. Again, 30% have. We do have information on this area, but not every study has. So what I'll present to you is the information we have to date, the best information available today.

Thirdly, we have what we call a "file drawer" problem where we have studies with findings that are not significant or not dramatic not getting published, and that's a concern that some people say exists. But within meta-analysis we can do a calculation that tells us how many other studies we'd have to do to call the current results into question. For example, for the most comprehensive analysis that's been done in this area, we'd need to do another 150 studies to call the current results into question. So the current results are rather strong when you look at it that way.

The fourth area is what's called an apples/oranges problem. If you read a story in the *Globe and Mail* recently, someone addressed meta-analysis and said, well, it's a study but it really falls apart when you consider that they include studies with different questionnaires; they include studies that are not exactly the same. But in fact this is one of the greatest positives and pluses of meta-analysis, one of its greatest strengths, because in research we have a thing called validity. When you have various studies all pointing to the same end and finding the same results, you have increased validity. So this apples/oranges problem, as we call it, is actually a great strength in meta-analysis.

If you have any questions about that, I'd be happy, but at the risk of boring you with more information on methodology, I'll move on.

The findings in the area have consistently been that regular non-parental care of more than 20 hours a week posed a significant risk to children in their development. That's prior to the age of five, more than 20 hours a week, and on a regular basis.

What are the areas of risk?

Number one, in a substantial form, a risk to the bonding between child and parents. In other words, it increases the risk of these children forming insecure bonds to their parents. Are all children going to form insecure bonds? No, but it increases the risk substantially. Number two is in the area of social-emotional development, and number three is in the area of behavioural development. Cognitive development demonstrated no real significant differences. The most important one, as we see it, is this issue of bonding and attachment, for the reasons I spoke of earlier.

Furthermore, looking at issues such as quality, family structure, socioeconomic status, do these potential confounds or mediating variables have a substantial influence on the outcome? A, B, C — none of them had a substantial influence. What we found is this information pointed back to parents doing a good job with their children. We found the parental care consistently outperforms non-parental care for these young children. Regardless of whether the mother is single or married or living with someone, she generally does a better job than the people who are not caring. Now, there are many high-quality non-parental care institutions, but children seem to form more secure attachment with their parents when they're cared for by their parents on a full-time, regular basis prior to the age of five.

The last area I'd like to address is a study you may have heard about, and if not, I'm sure that you will. It was broadcast widely throughout the press. It was a study by the National Institute for Child Development and Health, I believe it was, in the United States, a large study. They just came out with the results of it, saying that trust in mothers — they specifically looked at mothers — is not influenced by extensive non-maternal care.

There are a couple of things I'd like to tell you about that study very briefly. Please know that in that study they also found that when mothers were insensitive to their children and they separated those children from their mothers who were insensitive for 10 hours a week, these children were substantially more likely to form insecure attachments. That's a much more conservative figure than I presented to you today and that's what they reported, but that did not get much media attention. That's one.

Two, you should also realize that in that study, and I have it here if you would like to look at it, they counted fathers as day cares. A substantial portion of the children in care other than the mother's were in the father's care. So it absolutely confounded and confused the results.

They also did a few other things, like they didn't validate some of their instruments, so their measure for maternal sensitivity had no basis, no validity at all. The way they broke up their times into zero to 10, 10 to 30, 30 or more has absolutely no precedent in research. All the findings have 20 or more or 20 or less and they say that in their introduction, yet they went ahead and broke things up and it just confounded and confused the results. So the study is really very, very concerning.

Again, remember, even if one were to attend to the results, it's one study that adds to a list of about 100 existing published works. It is one study. It is nowhere near the power of a meta-analysis bringing together all of the information in this important field.

What would we recommend? We would recommend that the government consider working in conjunction with other initiatives that are going on across the country. At the federal level, for example, there is a motion right now before the House, motion 30, calling for caregiver tax credits. These tax credits would go to people who are providing care in their home for young children, for disabled and for elderly people. What this would do is recognize the substantial benefit and contribution these people make and give them the respect and dignity they deserve. This is a motion, it's not a bill, but has been deemed votable by the private members' committee and will be voted on in October 1996, it's my understanding.

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There is also a bill that has had first reading and is in the drum, and that is Bill C-240. Bill C-240 is calling for the conversion of the child care expense deduction to a tax credit for families. What does that do? That gives all families a tax credit, specifically for families with children under five years of age. If you have these children, you have responsibilities, you have expenses, so you get a tax credit. Our system recognizes that. Then the families have some more money left in their pockets and they can choose to take that money and focus their time on the care and management of their family, or they can use non-parental care. It's their money. They keep their money and they can do with it whichever they like.

Is it everything? No, it's not a be-all and end-all, but it is a first step that appears to be consistent with the information. In fact, regardless of all of the data, 70% — again coming back to mothers — in 1991 responded to a Decima Research poll saying that if they had the economic strength and opportunity, they would focus their full-time work on the care and management of their family. Also, in excess of 70% of the population in 1994, including 70% of single-parent families, responded to a national poll by Angus Reid and said: "We, as families, should be solely responsible. We should be primarily responsible for the child care of our children. The government should not have that responsibility." So that's Canadians speaking. Regardless of any of that, the data are clear.

I'll close off my brief there. You have information in front of you.

The last thing is that we also would recommend a primary prevention program. Margaret Wente spoke about a woman in Toronto who is a psychologist who has a background in attachment doing some fantastic work in the city with parents who are at high risk and who are generally immigrant, low socioeconomic status, high-risk people. That doesn't bring the two together. There are many excellent parents who are low socioeconomic status. But apparently she's doing some wonderful work. That's a private initiative.

We are also proposing an initiative that will start at our head office in Calgary but hopefully expand across the country, and we call that Great Beginnings. It's a program aimed at new and expecting parents to say: "Look, folks. We always hear that people want this information 20 years ago. You can now have it 20 years ago. Here it is. You have the choice. Here's some information. Chew on it. Ask questions. Debate it. Personalize it. If it can be

of help to you, we'd be very pleased." That's just an example of another private sector initiative that is meeting with some substantial interest from foundations and corporations across the country who are considering supporting it. We're not coming to you asking you for money. We're not interested in your money. But I just thought you should be aware of the issue. Thank you kindly.

Mr Carroll: Thank you very much, Doctor. I thought only us old guys believed in the fact that children are best raised by their parents. It's nice to hear there is some body of evidence which suggests what I firmly believe, that the toughest job in the world is being a —

Mrs Papatello: What he said is mothers.

Dr Genuis: No, I didn't say mothers; I said parents.

Mr Carroll: The toughest —

Dr Genuis: No, okay. I'll explain that in a moment. I'm sorry. Go ahead.

Mr Carroll: I would love to get through one of these without a lot of interruptions, please.

So it's heartening to hear there is some evidence that supports that and we should put our emphasis in that area. Everybody I have run into who is a proponent of regulated day care quotes the same Perry preschool study and talks about reductions of 40% in teenage pregnancies and drug use and talks about \$7 spent today saves us \$7 in the future. They use this study to say that's why we should have regulated day care.

As a researcher who obviously has been into this, could you comment on the validity of this study? It seems to be totally opposed to what your studies have shown.

Dr Genuis: It's not opposed to it at all. In fact, what you'll find, and as the person presenting before me discussed about high-risk families, high-risk children — you must realize that not every family in our society is high risk. For those who are at that extreme end of the scale, a researcher named Yoshikawa in New York conducted a review of the literature in the area. What Yoshikawa found was that these intervention programs aimed at helping families directly who were at very high risk made a positive difference. But they were focused solely and entirely on families of high risk. I would caution the government that programs that are supposed to help high-risk families, when they're spread out across the board, do not help optimally high-risk families because you are targeting everyone who doesn't need it.

Through systems such as tax credits and so forth, if you can take care, in a sense, of the majority, then you can focus on that minority of families, that minority of society, establish a tight net so you can support them, and programs such as Perry preschool. There are other ones, there are many others, that have been found to be helpful; that's fine. But again, understand who you're dealing with. The information I've presented to you covers the whole spectrum of society. Perry preschool focused more so on the high-risk element of society. Not everyone is in that category.

Mr Carroll: What's interesting to me is that you're the first person that's indicated that this Perry preschool study did focus on children who are more at risk than just an average spectrum of children.

Dr Genuis: In fact, the person before me said the same thing.

Mr Carroll: So you recommend basically that child care is best provided by parents as opposed to any kind of non-parental?

Dr Genuis: I wouldn't recommend that, sir; the data recommend it. That's not "a" body of evidence, that's "the" body of evidence. The research from all over the world for the past 40 years consistently demonstrates that parents are capable and they do a good job. A minority of parents have various tremendous stresses in their lives and require assistance and support; absolutely. But, by and large, parental care consistently, and substantially in some cases, outperforms non-parental care.

Mrs Pupatello: Thank you for coming today. You said at the outset that you didn't want to draw conclusions, you just want to present information, but at the end you are advocating, for example, the family tax credit, so you are making some recommendation. Ideally then, children should be raised by both parents, with both parents staying home; do you feel that way?

Dr Genuis: No. There's been no body of research looking specifically at that question, so I can't comment on it. What we can look at, though, to get into that area — and I'll try to be brief because I understand the time limitation and I apologize — there are two things.

Mrs Pupatello: Could you speak to the mother staying home?

Dr Genuis: Okay, the two things, and the mothers; yes.

Mrs Pupatello: No, just the mother, if you don't mind.

Dr Genuis: The mother and the two parents; okay. First of all, we're not proposing a tax credit. The tax credit was proposed by Mr Paul Szabo of Mississauga South. What we're saying is, that is an example of a government initiative that is consistent with the information. We're not a lobby group, we're just an education organization, and that's one idea that's come to us. That's one example. I just wanted to share it because we've been accused of —

Mrs Pupatello: Can I ask you a question about a part — this is page 4 of your report — "It should be noted...50% of children in the regular non-parental care category did demonstrate secure bonds," so that means 50% didn't. That whole paragraph, "unmistakably negative effect in three of the four main areas," that's when it was compared to those children in regular non-parental care for more than 20 hours per week. Since the majority of non-parental care is in unregulated child care, one could look at your findings and derive that unregulated care then has unmistakable negative effects on children.

Dr Genuis: An excellent question, and that will make four that I'll answer. No, you can't do that because both regulated and non-regulated care were included, and there's a substantial amount of regulated care that has been assessed. In fact, because a large percentage of the people studied were in areas such as medium to high socioeconomic statuses, university day cares and so forth, most of these are regulated, so there may in fact be a higher percentage of regulated care in these studies than outside in the general public.

Mrs Pupatello: Does that mean that your pool of research then didn't reflect the actual use of day care in Ontario?

Dr Genuis: The whole gamut has been included. This is from studies for four years —

Mrs Pupatello: No, only that the greater percentage of day care is not regulated, so your pool then did not reflect what truly exists out there; is that right?

Dr Genuis: It's not my pool. I am reporting to you the results of the information.

Mrs Pupatello: That's good enough. Thank you.

Dr Genuis: And the other point is that it does represent — in fact, the limitation of the study, as you'll see when you read through the report, the first limitation is, a higher than representative percentage of the studies have included middle socioeconomic statuses, but you must remember that the whole range has been directly assessed.

The other point is the family attachment — I have talked about that — with regard to addressing mother. The information has talked about not mothers but both parents. In fact, in the non-maternal care field, non-maternal is defined as non-parental because we found that when children are in the care of their fathers they are not at risk. That's to talk about the mothers.

Mrs Pupatello: Could I just ask a question —

Dr Genuis: And the last point, before you go on — let me finish because it's important —

Mrs Pupatello: I'm the one that's going to get cut off, actually —

Dr Genuis: Oh, I apologize.

Mrs Pupatello: Can you tell me, you're based in Calgary, you're from Calgary?

Dr Genuis: I'm from Toronto but I'm based in Calgary, yes.

Mrs Pupatello: The organization is based in Calgary?

Dr Genuis: Is now based in Calgary, yes.

Mrs Pupatello: You're a charity —

Dr Genuis: Yes.

Mrs Pupatello: — a non-profit charity, so you have donors from corporations. Who would your largest donor be to your organization?

Dr Genuis: Our largest donor? Our largest donor would be a — I don't know if they are donating as a family or through a company, but it's Trinity Energy Ltd based in Lloydminster and Calgary. We have various individuals and private foundations and —

Mrs Pupatello: Any political organizations?

Dr Genuis: None. No political, no religious, and no government.

1700

Mr Martin: Good afternoon, Mr Genuis. I find your presentation extremely interesting and I have some real concern. I'm the father of four kids myself. The oldest is 12; the youngest is six. Two of them went to preschool and two of them didn't, because my wife and I decided that two of them wanted to do that and would benefit from that and were ready to do that; two of them weren't. I guess I'll report back to this committee in about 15 years as to how they made out. It'll be a study in itself, won't it?

First of all, how did you get to come to this committee? Did you hear about it?

Dr Genuis: I was called by Ms Mellor or Ms Mellor's assistant and asked to come.

Mr Martin: Who put him on the list?

Interjection: We didn't.

Mr Martin: You didn't? I don't think we did. Did you put him on the list?

Ms Ecker: I have no idea who's on the list, but he probably got on the list the same way every other group that came before us.

Mr Martin: It seems to me the process is we put some names forward and you put some names forward.

Interjection:

Mr Martin: It's okay. I just wanted to know that.

You've been at this for about 18 months now?

Dr Genuis: The organization formally received its charitable status on November 25, 1994.

Mr Martin: You've obviously referenced it yourself; there was a very critical article in the *Globe and Mail* on April 27 about your findings —

Dr Genuis: Yes. You should also be aware that we've received written apologies for some of the misquotes in that product. We've received a number of apologies from Ms Philp as well as some of the people quoted in there, so I'd be careful about drawing too much.

Mr Martin: So you're saying that this just doesn't hold up, that the people here who challenge you re whether you really did publish, whether you really did present — that you did all those things. You're saying that this is all wrong?

Dr Genuis: In fact we have submitted a response to the *Globe and Mail* which they somehow have decided not to print, at least as yet, and have a formal response going out. And, yes, the information is incorrect. The vast, vast majority of information is incorrect, yes.

Mr Peter L. Preston (Brant-Haldimand): In a newspaper? Shocking.

Mr Martin: How do you deal with the fact, being at this for 18 months, a long, long time, that a lot of what you're presenting is in direct contrast to what players in the field for a number of years are saying and suggesting is in the better interests of the children whom we all have very serious responsibility for and want to do the best for? Do you have any difficulty with the fact that maybe what you're presenting, because it's obviously getting a pretty good uptake, might in fact have a serious result for all of us?

Dr Genuis: Yes. I assure you that as a psychologist I'm aware that my brain is fully developed by this age, so I'm able to read and understand and comprehend and share information at a very sophisticated level. So that's one. You should also know that the data that I am presenting to you is based on players in the field from all over the world for 40 years. I am simply sharing the information with you.

The research that I'm presenting to you, for example, from the meta-analyses, the three of them — two have been conducted in the United States and one of them conducted in Canada — are all conducted by very senior people throughout the world, and so I am simply presenting to you the information from serious players in the world all over. If there are people coming in who are presenting to you contradictory information from one

study or another — we've gone over that about the difference in validity between a study and of comprehensive and cutting-edge technologies of meta-analyses. If you have people coming in front of you lobbying for one way or another, I can't tell you why they would be saying something different, but when we do look at the data, when we do look at the information gained from the careful examination of people's lives conducted by junior and senior people throughout the world, when we bring that information together, when we standardize it, when we analyse it, void a researcher bias, sir, we have very clear results. There are some limitations in the data, but frankly it is the best in all of the information we have to date. If you are going to be making decisions as decision-makers of society, I would encourage you to pay attention to the most recent and the most comprehensive information we have available, and that's why I'm presenting that to you.

Mr Martin: Could I just have one last quick question?

The Chair: Quick.

Mr Martin: This guy is obviously a bright guy. After 18 months in the field, we don't want to miss an opportunity to ask him a good question.

Your recommendation here in the summary is that we enhance the economic strength of Ontario families. What would you say to a government which has just taken 21.6% out of the resources that the most vulnerable of our families take home to put food on the table and housing over their heads and clothing on their backs?

Dr Genuis: Are you talking specifically about welfare families, sir?

Mr Martin: Yes, to take a quarter of their income away. Is that in support of the economic strength of Ontario families?

Dr Genuis: What I would recommend to you, sir, is that as the organization, as I said earlier, as a psychologist — and please have it understood first that this is breaking out somewhat from what I originally came to address you with, so I'm not making a formal presentation to answer this question in this area at all. Please understand that. However, when you look at that particular area, our organization would focus on prevention. When we look at prevention, what we would argue is that it might be in the best interests of society to look at what develops people into these particular situations. We would argue that the government would be best served by increasing opportunity for these people to move off that system rather than continuing simply to work within that realm that doesn't seem to be bringing any strict benefits when you look at the increases. But I would request another time to come before you and present specific data in this area so I could speak to it intelligently and based on information rather than based on intellectual arguments.

The Chair: Thank you kindly for presenting obviously stimulating and interesting information. We appreciate your presence here.

Dr Genuis: Thank you for your time.

Mrs Pupatello: Just before the group breaks, I wanted to offer a copy of that document that was leaked from Comsoc. The government members likely don't have access to the description of the voucher system and the

negative effect of the voucher system. I do have a copy. If you'd like to see it, please call my office, or I'll bring you a copy. While your member disagreed that it even existed, I do have a copy here and I'm very pleased to give you one.

Mrs Ecker: Mr Chair, I am getting extremely angry at the deliberate attempts by some members of the opposition to continue to scare the heck out of parents about what they think this government is or is not going to do. We may well have legitimate political differences of opinion about what is or is not going to happen, but I take great exception to Ms Pupatello continuing to do this kind of thing out there.

That wasn't the point I was going to do.

Mrs Pupatello: This is yours.

Mrs Ecker: It is not and it never has been. I take great exception to this.

Anyway, the point I wanted to make was, would it be fair if we could have, as part of the report of the committee, a list of whose witnesses are on, who put what witnesses on the list? I think that might be helpful for those analysing comments.

The Chair: That's fine.

There being no other comments, we will adjourn today and resume tomorrow afternoon at 3:30.

The committee adjourned at 1708.

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Wildman, Bud (Algoma ND)

**In attendance / présents*

Substitutions present / Membres remplaçants présents:

Bartolucci, Rick (Sudbury L) for Mr Gerretsen

Carroll, Jack (Chatham-Kent PC) for Mr Jordan

Froese, Tom (St Catharines-Brock PC) for Mr Pettit

Martin, Tony (Sault Ste Marie ND) for Mr Wildman

Pupatello, Sandra (Windsor-Sandwich) for Mr Kennedy

Clerk / Greffière: Lynn Mellor

Staff / Personnel: Ted Glenn, research officer, Legislative Research Service

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Journal des débats (Hansard)

Mardi 18 juin 1996

Standing committee on social development

Children's services

Comité permanent des affaires sociales

Services à l'enfance



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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
SOCIAL DEVELOPMENTCOMITÉ PERMANENT DES
AFFAIRES SOCIALES

Tuesday 18 June 1996

Mardi 18 juin 1996

The committee met at 1546 in room 151.

SUBCOMMITTEE REPORT

The Chair (Mr Richard Patten): We'll convene the committee hearings. Before we call our first witness, I believe we have a motion from Ms Ecker.

Mrs Janet Ecker (Durham West): I'd be quite happy to move that the committee accept the subcommittee report as it is printed and distributed to the committee, subject to any direction or comments that the rest of the committee may have.

The Chair: Do we have agreement on that? Seeing no disagreement, good. Thank you.

CHILDREN'S SERVICES

Consideration of the designated matter pursuant to standing order 125 relating to the impact of the Conservative government funding cuts on children and children's services in the province of Ontario.

WINDSOR-ESSEX CHILDREN'S
MENTAL HEALTH CENTRES ASSOCIATION

The Chair: We now call our first witness this afternoon, the representatives from the Windsor Regional Children's Centre and Glengarda Child and Family Services. Welcome to our hearings, gentlemen. I ask that you introduce yourselves as you make your presentation. You have approximately half an hour. Whatever you use up in terms of your presentation, the remaining time will be for members to ask questions of you. Welcome and please proceed.

Dr Martin Girash: I'm Martin Girash. I'm a psychologist by profession for more than 25 years, and have been executive director of the Windsor Regional Children's Centre in Windsor, which is a children's mental health centre, part of the children's mental health centre service network. My colleague today is Mark Donlon, executive director of Glengarda Child and Family Services. I'd like to turn it over to Mark to begin the remarks.

Mr Mark Donlon: At the beginning, I'd like to thank the committee very much for this opportunity to speak to you today about how the children and families in Ontario are doing. We represent an association of agencies in Windsor which collectively provide treatment services to some of the most disturbed and special-needs children and families in our communities.

It is increasingly clear that changes in our society and our economy and in family structure itself have had a significant impact on how families are doing in terms of

their ability to raise children to be healthy and productive adults. There is clear evidence in our society that our approach and our values are not being successful in meeting an increasing number of children's and family's needs.

The purpose of our presentation today is twofold. First, we would like to provide you with some concrete and specific information on how children and families are doing; second, we would also like to provide information regarding recent and new approaches to the difficulties that we are going to allude to. The submission concludes with three specific recommendations to the committee regarding possible and innovative responses the government could consider to some of these issues.

Certainly, when you talk about children in Ontario and how they are doing, it is relevant to talk about the impact of poverty. There is little question that poverty has a detrimental impact on the positive development of children and families. As such, it is reasonable, in assessing how children are doing in Ontario today, to examine how well we are doing as a society in helping them to avoid this collectively being in poverty. Unfortunately, there is clear evidence that we are not doing well in this regard.

In the last five years, there has been a 53% increase in the rate of child poverty in Canada. There are now 1.3 million poor children in Canada, enough to form the fifth-largest province. Poverty strikes six out of 10 children who live in a single-parent family, and where the eldest parent is 30 years of age or younger, the child poverty rate has increased by 39% since 1989. Two out of every five children in a young family are poor. There are 1.1 million children who depend on social assistance for support. This reflects an increase of 61% since 1989.

Canada has the second-highest number of poor children among 18 industrialized countries, with more than one in seven living in poverty today. The United States is the only country of the 18 surveyed that has more poor children.

If you look at what happens to children when they are poor, there are specific statistics that tell us how they're doing. The child mortality rate is twice as high among families at the lowest income level. Drowning is 3.4 times more common among boys of low-income families. Low birth weight is 1.4 times higher. Children from low-income families are 1.7 times more likely than children from other families to have a psychiatric disorder, 1.8 times more likely to do poorly in school and 2.1 times more likely to develop a conduct disorder.

Ontario teens in lower-income families are 1.8 times more likely to smoke, 1.8 times more likely to have an alcohol problem and 1.4 times more likely to use drugs

than in higher-income families. The high school dropout rate is 2.5 times higher among children who live in poor families than it is for other families.

The rate of completed suicide in young male adolescents is four times higher than it was 30 years ago. The rate of completed suicide in 10- to 14-year-old boys has doubled in that time. Canada has the third-worst adolescent suicide rate in the world.

Violent crime by youth and school violence are continuing to rise dramatically. The incidence of serious problems and control of aggression by children as young as three years of age is currently 22%, which is three times higher than what it was 20 years ago.

On the other hand, a number of studies have shown there are some things we could do that are successful in having an impact on poor families. High-quality prevention and early intervention programs are successful in helping poor children to achieve far more positive results. One recent American study showed that the longer a disadvantaged preschooler received high-quality child care and education prior to grade 1, the more likely that child was to do as well as other children who are not disadvantaged.

In the Perry Preschool Project in Michigan, 33% more of the severely disadvantaged children who received high-quality child care as preschoolers completed high school. Tremblay's prevention study for seven- to nine-year-old boys noted as disruptive in kindergarten produced better academic performance and fewer delinquent behaviours when children reached the ages of 10 to 15. In the Ryerson outreach program, three times as many teachers stated that respect of children to teachers increased and that vandalism was down as a result of that outreach service.

These are all examples of programs that can have a positive impact and have been shown by research to have a positive impact in intervening in some of the grim statistics I just quoted to you.

Dr Girash: What we'd like to talk to you about today is changing the way we do business. We know that the basis of how individuals act in their communities as adults is established during childhood. This is no longer just an opinion; it is well documented through decades of research on parenting and child development. It is also now clear that responding to our children's needs in ways that specifically reinforce their sense of personal accomplishment is central to their development into adults who are able to function to their best ability. This, in turn, is central to whether we will have an effectively functioning society.

Traditional mental health services have been based on a curative philosophy whereby a problem is identified and a treatment is prescribed. Although this approach may be helpful in specific situations, it has not, as the above data illustrate, been very effective in meeting the needs of children and families, particularly those within lower socioeconomic conditions and also those with complex needs. Paradoxically, it is these children and families who consume the majority of our public service resources.

Fortunately, a new model is emerging which is based upon a radically different approach to meeting the needs of children and families. A basic tenet of this new

approach is that children and families who are supported in meeting their own individualized needs have greater success than when they are totally dependent on traditional programs and services to meet their needs. Characteristics of this approach include:

- Building on family strengths.

- Providing support early.

- Viewing the child in the context of the family and the family in the context of the community.

- Empowering parents to better meet their own needs and those of their children.

- Utilizing traditional programs and services as components of the overall plan but not the sole answer.

- This is a key one: Primary participation by the parents, the child and significant others in their lives in identifying their goals and specifying their needs.

- Finally, having available flexible resources, both financial and otherwise, which can be used as options in meeting their personalized needs.

The above principles are currently being used in innovative communities across North America and are referred to aggregately in the literature as "the wrap-around process." There are approximately 20,000 families in the United States currently benefiting from this process and it is estimated that 40,000 families will be involved within a year.

Preliminary research is indicating that this approach can be significantly more effective than traditional approaches, which are, in turn, more effective than no services at all. However, the research also is suggesting that the effectiveness of the outcome is closely associated with the degree to which the participants are true to the defined characteristics. This is consistent with research generally which ties effectiveness to high levels of training. Here we're talking about not just training professionals, we're talking about training parents, and that's a key to this new approach. It is not enough to say that we follow a particular approach; we also must be well trained in doing it.

The Ontario Association of Children's Mental Health Centres, of which we are members, has been a catalyst in bringing to Ontario innovative ideas and strategies, such as the wrap-around process, to address the most complex issues in family and child development. For example, just last week the OACMHC brought Dr VanDenBerg, one of the pioneers in the wrap-around process, to Ontario to introduce this new approach to its 97 member agencies. This type of leadership and innovation has been a characteristic of the OACMHC since its founding in the early 1970s. Through their work, those of us in the children's mental health field have been kept abreast of the latest best practices.

Another group within our province, which is instrumental in ensuring that approaches to children's mental health are based upon solid research and the most current best practices is the Sparrow Lake Alliance. The work of the Sparrow Lake Alliance and the Ontario Association of Children's Mental Health Centres and its member agencies focuses on enhancing the positive developmental forces that exist in every young child and in families. These forces must be nurtured and allowed to flourish if they are to become the currency of our society. We could

never have sufficient external resources to rekindle these forces after they have been snuffed out. Evidence that the work of the children's mental health centres in our province is effective is beginning to be collected through the OACMHC. But more important is the fact that the literature on effectiveness of children's mental health work is being closely linked to best practices and family-centred approaches, both of which the alliance and the OACMHC are committed to facilitating.

In summary, and based upon the information presented here, we respectfully offer the following recommendations:

(1) That the government of Ontario use as guiding principles in its work the child- and family-centred characteristics described above.

(2) That the Ontario government establish as its highest priority the enactment of legislation and the establishment of policies which support children and families in meeting their individualized mental health needs.

(3) That the Ontario government work with the Ontario Association of Children's Mental Health Centres and the Sparrow Lake Alliance in developing and implementing these policies.

Thank you for the opportunity to address you today. We'll be happy to answer any questions you may have.

1600

The Chair: Thank you kindly for the presentation. We have 15 minutes, five minutes per caucus. We begin on the government side.

Mrs Ecker: Thank you very much, gentlemen, for coming and putting forward some very good ideas and some interesting concepts which I think will be very helpful.

I have two questions. I was very pleased to see your comments about building on family strengths and trying to make families stronger in order to ensure that children are brought up well. Is employment of the head of a family, male or female — being able to be employed, having a job, whatever — one of the things that would predict whether a family can be strong or not, one of the parents having a job?

Mr Donlon: The research we're most familiar with alludes to several things as contributing to healthy family functioning; among them is a minimum standard of living. Certainly employment is the most typical way people achieve that.

In the data on families that are not doing well, when you are talking about the unemployed, typically you're talking about people who fall below that perceived ideal standard, so I guess in short the answer is yes, if you have paid employment that is of a sufficient minimum level to support healthy family functioning, then they are more likely to function in a healthy way.

Dr Girash: Could I comment as well? I think in terms of the wraparound process, the way in which that gets translated is flexible resources. One of the reasons poor people don't do as well is that they don't have as many options, and you need options when you're raising kids these days. Some of them are very specific, some of them are financially driven in the sense that you have to be able to do some things. I'm not talking about just giving money; I'm talking about being able to do some things to

your health, to your transportation situation, to whatever, to deal with the specific individualized needs you may have with the child you're trying to raise, particularly a special-needs child.

Mrs Ecker: You talk about the wraparound concept, and I'm not sure if this is similar to what the Ministry of Community and Social Services is looking at, what we call individualized funding where funding goes to a family. It follows the child, follows the family. Is that similar? Is that approach that we're looking at very seriously now because of the need for flexibility, because of the need to empower families, similar to the kind of thing you're recommending?

Dr Girash: It's starting to approach that concept. The problem is, if the funding follows bureaucratically, which is still part of the system we operate in, we're still going to have a problem. The funding follows, but is the funding really available for nontraditional service-type purchases or necessities? Even though the funding may follow, it may say, "If this kid needs psychotherapy, then we should be able to purchase that for this child with this flexible funding." The wraparound process goes beyond that and says we're not talking just about psychotherapy.

Mrs Ecker: So the money goes to the individuals, as opposed to organizations, is that what you're saying, more directly?

Dr Girash: It has to be available to individuals, whether it actually goes to them. Whether or not in the process they actually write the cheque is not as important as it being available for a whole host of flexible options, including nontraditional clinical issues.

Mr Donlon: If I could give an example that might be helpful, in one American study, using single parents who were on social assistance in a particular state, they trained and hired people to serve as friendly visitors to them. They followed them for five years. What they found was that where in essence the only difference between the one group and the other was that this one group received a friendly visitor on a weekly basis, five years later — as a result of that service, one assumes; there was no other significant difference between the two groups — the rate of referrals for child abuse was half in the group that received that friendly visitor.

If you make funding available for programs such as that, that are attached to services directly to the people, to the family involved, that's sometimes the result you will see.

Mrs Ecker: Yes, and that's very consistent with some of the things that we're doing both in health and community and social services.

Mrs Julia Munro (Durham-York): My question probably relates very closely to the one already given, but on page 4 where you talk about empowering parents, I just wonder if you could give us some example of the way in which you see that actually coming forth.

Dr Girash: Yes. Dr VanDenBerg shared some of those examples, and we actually had some parents at the conference where this was worked through. It very much depends on how it's presented. In other words, we are sometimes I think somewhat reluctant to really see some of these people as having resources — personal resources I'm talking about — so we treat them as underprivileged

and do things to them, as opposed to working with them and helping them meet their needs. The empowering process is one whereby there's respect and a great deal of support. They will tell you what that support is and what they need, and if we listen to that, then we'll be able to meet those needs, but we don't often listen. We often think we have the answers to what they need rather than listening to what they need.

Mrs Sandra Papatello (Windsor-Sandwich): Thanks very much for coming up from Windsor. The other government members, I hope, will know that the children's agencies in my community have worked together and have formed an alliance of sorts to initiate a number of projects to use their money wisely, despite the cutbacks in recent years of agencies, including yours.

Dr Girash, maybe I could start with you. In your agency, in this last year, what is the result of the cutbacks felt by the Windsor Regional Children's Centre?

Dr Girash: We specifically had to close an adolescent program, actually take it out of existence.

Mrs Papatello: Where did those children go?

Dr Girash: We were able to phase it out so that the work with the actual children was completed. The ones who would have come into our program would then be served by Maryvale, but they have an added waiting list because the resources, of course, weren't there to serve them, so they took over the mandate without the resources.

Mrs Papatello: The more the community agencies struggle to do the service with less, and you find very innovative ways to do it, you're sort of proving the point that you really don't need more money to provide these services. How do we know you really can't afford to take any more cuts to your agencies?

Dr Girash: What we're doing with the new approaches is we're getting our house in order and we're doing that fairly quickly, I think. Once we start, on a widespread basis, working this way and we still have more demand than the resources available, then I think we can clearly say we need more resources.

We didn't want to come here asking for money, because everybody is asking for money, but I think the allocation of money for children's services — one of our recommendations is that the Ontario government identify children and families as the highest priority — \$160 million I think presently is allocated in the province to children's mental health services, throughout the entire province, and there's something like \$16 billion or \$17 billion in health generally — you don't have children as a priority, and that's some of the concern we have. So yes, number one, we want to be more efficient, and yes, we realize that we can do business differently and more efficiently, but we're doing that so we can then say clearly we need the resources that we need and you can't come back to us and say, "You guys can be more efficient." We're doing that work.

Mrs Papatello: Can I ask, Mr Donlon, if you could describe your best argument for why it's economically smart to spend the money on children's services.

Mr Donlon: There are, I am sure, others who have said to you that for every dollar you put into children's services there are studies that suggest you save \$7 down

the road in terms of costs for some of the programs that work with adults who have not been able to achieve a level of positive functioning.

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I think that speaks in and of itself to the fiscal costs, but I think morally it certainly is — there are studies now that are saying that about one in four children in our society will not achieve their potential. Aside from the financial cost, there is the human factor in that, and the morality perhaps of knowing that about 25% of our children are not going to do as well as they should. That doesn't just harm us economically, it's a human tragedy. It is part of why we are suggesting that if sufficient funding can be attached to some of these innovative new approaches, we can actually do them, we can make a difference. The research is clearly saying we can do some stuff that will work.

But you have to understand also that in our business the most needy children are the most expensive to care for and treat. If you put a child in a residential program who is the most disturbed in their functioning in your community, it costs a great deal of money to treat them. If you could go to a preschool program and provide prevention and early intervention services, your chances, and research supports this, of not having that child requiring residential service 10 years down the road go way up, and that saves the taxpayer a great deal of money.

Mr Floyd Laughren (Nickel Belt): To follow up on that very point, that argument isn't working. It's not convincing people out there, society, because right now if you did polling I suspect people would say the government's on the right track. You crack down on welfare rates and you get tough on young offenders and you end the parole system for adults. It's all on the one side of the spectrum, if you will. I call it the preventive-versus-cure argument. That may not be the correct term. Not just now; I don't think society's ever bought into the arguments you're making, because the evidence isn't as living for them as the dollars spent are.

I don't know how we do that. I don't know how we convince the world out there that prevention's more important than cure, and a lot cheaper. I don't know whether you've got any help on that, but it really is frustrating.

Dr Girash: If I could just personally say, I don't think we are really committed, nor do we really believe that children become adults. We don't believe that. I don't know if it's because we've denied our own childhood or what we've done, but we really don't think of our children as eventually running our businesses, paying into CPP and helping me be in a long-term facility.

Mr Laughren: Occupying our jails.

Dr Girash: Exactly. I don't think we really, truly believe — we haven't had the research until recently to come back and say, "We've got the hard research on that." We're talking about kids growing up into adults, and there's no question about it, how they're treated as children — that treatment needs to be sensitive, it needs to be firm, it needs to be guidance, but it needs to be respectful. The member asked about respectful for families. The children need to be respected as well. If

they're not, they will turn out — many of them in our area will be put in jail. We're talking about \$50,000 to \$100,000 a year for a child in jail or in a residential treatment facility versus the Ontario Association of Children's Mental Health Centres member agencies' average cost of \$3,000 per child.

Mr Donlon: I think we've done a poor job of communicating the results of us doing this. I think, for example, most people today are very concerned about the escalating amount of violence in schools. Everybody's worried about it. Anybody who has a child they send to school, and they come and talk about somebody being horrendously beat up, is worried about that. What we need to do better is to communicate that there is a connection between things.

The escalating violence that's being seen in children, as I quoted earlier, as early as three years of age, is being identified as problematic at the age of three, and what we are talking about is linked. They are. If we don't want to have a society where you need a tank to go to the store, then we're going to have to do a better job of meeting children's needs, and we're not doing that job right now.

Mr Laughren: To what extent is there a breakdown of the severity of the problem of child poverty in jurisdictions, not just Ontario but even within Ontario, with the rest of Canada?

Mr Donlon: I'm not clear on what you're saying.

Mr Laughren: Is the severity of child poverty worse in a place like Toronto than it is in a place like Sudbury or some other part of the province, and how does Ontario stack up with other parts of the country?

Mr Donlon: In short, I don't know.

Dr Girash: We do know Canada doesn't stack up very well compared to the other countries. That was in our data.

Mr Donlon: Canada is very poor.

Dr Girash: We know Canada doesn't stack up very well to other countries in regard to that.

Mr Laughren: I was trying to get a picture of Ontario.

The Chair: Thank you very much, gentlemen, for that presentation. It was excellent. Thank you for coming all the way from the Windsor area. We appreciate it.

PAUL STEINHAUER

The Chair: I'd like to call our next witness, Dr Steinhauer from Voices for Children and senior staff psychiatrist at the Hospital for Sick Children. Welcome again, Dr Steinhauer. I see you have your children's tie on again today.

Dr Paul Steinhauer: Yes, sir.

The Chair: I should have remembered to put mine on.

Dr Steinhauer: Going back to Mr Laughren's comment, I think that after having worn this tie for four years, stewardesses are suddenly starting to notice it consistently. So maybe we're starting to get them aware of children and — anyway, ladies and gentlemen, I was here less than a month ago. I'm going to take that into account in presenting to you today. I've prepared a fairly extensive, for me, brief that I put before you. I took the mandate that I was given in the letter inviting me rather seriously and I'm going to talk specifically about the

effects of the cuts. What I'm going to do, however, is start by talking a little bit about some general comments, because I think many of the figures I have in there speak for themselves.

First of all, it's got to be faced that not all children are going to respond to the results of funding cuts in the same way. Some families, like the families of psychiatrists and lawyers and probably MPPs and business executives, are not going to be affected very much because they can purchase privately the kinds of supports and services that are going to be lost to others. Even some families that aren't affluent are going to have better coping skills and they're going to be psychologically less vulnerable and they're going to be more cohesive and more flexible and more resourceful, and they may have a better support network. So not all people are going to be affected evenly.

It's going to be very difficult to predict the effect of a single cut, because multiple cuts are going to have a cumulative effect and you won't be able to sort out how much of what you're seeing is the result of loss of income, loss of job, loss of housing, loss of counselling, loss of special education for one of the kids, and loss of mental health services.

Secondly, repeated cuts are going to have a cumulative effect. The latest of a series of cuts is just going to be the straw that breaks the back of a camel that's already on its knees because of repeated cuts when it comes to children's services.

Finally, there's going to be a lag between the timing of cuts and the appearance of many of the effects. Some effects I think we can expect to see quite soon, such as increases in spousal abuse, increases in child abuse and an increase in the number of children who will die at the hands of their parents. However, some of the effects on children's intellectual ability and their ability to learn as a result of cognitive deficits which result from undermining of the quality of parenting and family life in the first three years may not be apparent until those children get to grades 1 and 2, whereas a child's inability to control his aggression, which may lead to violent and/or anti-social behaviour if the abuse isn't picked up, may not show up until that's an older child or even into adolescence. It may not show up until quite a bit later.

I think one thing we can predict with confidence, though it's going to take some time to accumulate the evidence to prove it, is that the cumulative effect of multiple and repeated cuts will be to undermine the development of vulnerable children and to increase the incidence of family dysfunction, spousal and child abuse, chronic health problems, mental health problems in children and their parents, serious academic problems, anti-social and violent behaviour, substance abuse, teenage pregnancy, adolescent alienation and decreased productivity, a decreased number of productive adults who are able to contribute to rather than just take from society.

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I would suggest to you that this is going to serve as a Pandora's box, and it's going to be harder and it's going to be more expensive, both in human and economic terms, to undo the damage to our teenagers of 10 years

from now who are showing the effects of today's multiple cuts to incomes and supports and social services.

I would suggest that there's a historical precedent here. In the late 1960s, the Ministry of Education, over the strong objections of many of its finest educators, decided to take away most of the standards in high school education, and as you know, we've been struggling for 30 years to build up standards of education again as a result of cuts that were made overnight with the stroke of a pen.

When we come to number 6, let's look at some of the specific cuts after those general comments. I'm going to say very little more about poverty, because it's been well talked about by the previous speaker. I have given you a graph prepared by the Centre for International Statistics — it's on your page 3 — that shows the difference in outcomes for children who are poor and children who are not poor. I would suggest to you that this is partly an issue of the economic deprivation of poverty, it's partly an issue of the lack of hope in the future that particularly those who can't see their way out of poverty experience, it's partly an issue of the increased rate of family dysfunction and particularly maternal depression and levels of violence and abuse within families that are highly concentrated in poor populations, and it's partly some of the effects that were being mentioned earlier such as the smoking, the drinking, the increased rate of teenage pregnancy. These are issues that are partly related also to peer pressures.

I'm not going to say much about cuts in the child care and junior kindergarten areas because I spoke about those exclusively the last time I was here. However, to remind you, I've reincluded two tables, one suggesting that the prerequisites for school readiness are the very prerequisites that tend to be increased by a good experience in child care, and I don't care whether it's parent care or whether it is home care or relative care or child care in a registered child care centre, whereas bad child care — and again I don't care whether it's bad parent care or bad care in any one of those areas — is likely to undermine the achievement of the skills they will need in order to learn successfully and also the capacity to control their aggression.

Finally, I've repeated the single sheet on the Perry Preschool Project to suggest to you that ensuring high-quality care in the kids who are most at risk of most of the outcomes that we would like to avoid can be achieved by high-quality child care over an extended period. I can't think of any investment that is more likely to pay off for the individual children and for the country and for the province than an investment in high-quality early childhood care and education.

Before we go on to page 6, here I'm talking about the effects of cuts in treatment for children's mental health problems. I want to remind you once again, as you would have gathered if you were at my previous presentation representing both the Sparrow Lake Alliance and Voices for Children, that our primary interest is not in just more treatment; we're very much interested in health promotion. We think it's better to get children off to a good start than to wait until they have entrenched problems and then try to spend long periods of time and a great deal of money trying to work the problems away.

However, you did ask for the effect of cuts in treatment for children's mental health problems. I think the first thing that I've listed on page 6 is the request for outpatient service in the department of psychiatry at the Hospital for Sick Children. The important column here is the last one, and it shows that in the last four years we have approximately four times as many coming to the hospital seeking treatment as was the case four years ago. In addition, there has been a doubling of the calls for so-called crisis intervention. This is when a family says, "We have to have help now because we can't live with this situation any longer." There are only three places in the Metropolitan Toronto area that give this kind of crisis care. It's given by the Hospital for Sick Children for anyone up to the age of 18; for younger children it can be given at the George Hull Centre; for older adolescents it can be given at Youthdale. Youthdale and the George Hull Centre now have waiting lists because they just can't keep up with the demand.

At the top of the next page I'm giving you the lists, the waiting time for an assessment — that's not for treatment; that's just for an assessment — in some Ontario facilities.

Fourth, in addition to there being longer waiting lists, there are decreased resources because staff and budget cuts have been going on for quite some time and, as a result, service availability has decreased. My own hospital, for example, if you look down to the fourth point, has cancelled a number of programs. It's cancelled an adolescent and pre-teen, it's cancelled a preschool treatment team and it's cancelled outpatient assessment and treatment for psychotic children which used to be given five days a week. It's now down to two days a week. Nobody else has made up those services.

The other problem, and this is not directly because of the cuts, is a lack of coordination throughout the children's mental health system. It wouldn't matter if one setting was cutting down on something if another setting was picking it up and you could balance things off. However, although representatives of the various settings have been meeting, nobody has or has been given the authority to coordinate resources except on a voluntary basis, and at a time when service demands far exceed service resources, resources are repeatedly being cut.

What you have in effect is a two-tiered system. If you happen to be wealthy, you can go out and purchase private care in the children's mental health area because there are lots of psychologists and child psychotherapists who can provide it, whereas if you aren't able to do that, you have to go on one of these long waiting lists regardless of the urgency of the situation.

Finally, at the bottom of that page I talk a little bit about the fact that families' perspectives are not particularly positive about this and they see roadblocks being thrown up all over the place. We're starting, our intake workers tell us, for first time to get calls from your colleagues, MPPs who are trying to see why there is such a logjam in the system and where they can go, and frankly we can't tell them where they can go because we don't —

Mr Laughren: Just opposition MPPs would make those calls, I assume.

Dr Steinhauer: I don't know. I'm sorry.

Finally, on page 9, I want to talk about the effects of reduction to funding of children's aid societies. I think that when you look at the effects of reductions of funding in children's aid societies, you've got to consider them in the context of the multiple stresses to which the families involved with child welfare issues are exposed. This leads to economic stresses for some families, housing stresses, neighbourhood stresses, employment conditions becoming stressful, mental health problems, child-related problems, adult relationships. The combined effect of multiple chronic stresses is more than the sum effect of the individual stresses taken singly.

There is, as a result, a rising and cumulative stress level that affects individuals and families by exaggerating existing personal psychological and interpersonal areas of weakness. That's how stress affects people. Any weaknesses they have as individuals or any weaknesses in their major personal relationships become inflamed and their ability to cope becomes whittled away if they're loaded with more stress.

Think of it. When you're particularly stressed, you're not going to be at your best in your human relationships or in the way you're functioning. If at the same time that you're increasing the stress, you're cutting down on the kinds of supports and services that vulnerable parents can use to get things back under control, the combination can be somewhat explosive.

1630

I think the combined effect of the exposure to multiple stresses and the diminished social supports and services for those families who experience both can be predicted: It's going to push many vulnerable but coping families past the breaking point, and for families that aren't coping well, it will make them cope even more poorly.

Children's aid societies, due to the effect of repeated budget cuts, are handling the pressure of increased demands for service — and that's demands by families, demands by doctors and by mental health services — by raising the threshold before which they will get involved. They are not getting involved these days — and I've heard this from both Bruce Rivers and Dr Colin Maloney, the heads of the two children's aid societies in Toronto, and also from the director of the society in Simcoe county — just not getting involved in kids who would have been in care for their own protection 10 years ago.

We're concerned here, first of all, about the number of children who are going to be abused, but we're also concerned particularly for infants and toddlers about the quality of parenting they receive in the first three years of life, when they are so vulnerable to the effects of poor parenting. This is one reason one of the first changes I think we're going to see is an increase in rates of child abuse and an increase in the number of children who die in their own homes.

Due to the cumulative effect of yearly cuts over the last few years, the quality of care that can be provided — I should mention to you that for over 30 years, one of my major areas of interest has been consultation to children's aid societies to try to improve the quality of their understanding and functioning with some of these most disturbed children in society. I think things have

reached a point where you can no longer count upon the fact that a child who is taken into care is going to receive even only adequate quality of care.

Children's aid societies of course are indirectly affected by cuts to other community support services as well. What is being dropped are programs designed to prevent children from coming into care, to support families who are at risk for neglecting and abusing, to support them to parent effectively, and to help youth in care who've had such a difficult time to prepare for independence successfully.

Finally, I want to comment briefly that the reduction in funding for programs for children with disabilities is basically having the effect of limiting the potential of many of those children, and taking the additional stresses and the additional demands these children create away from society and putting it on their families, to sink or swim.

With that having been said, I would welcome any comments or any questions.

Mr Gerard Kennedy (York South): I want to compliment you on your report. It brings together a lot of the academic and learned work about children with what is the day-to-day experience out there. It describes in some detail and with some technical support the feelings I have seen parents, in food banks particularly, unable to really articulate, the pressures they're feeling, the multiple sources for those pressures.

Given the changes, particularly in the last year — as you note, there are pre-existing pressures which recent budget cuts have been performed upon — but strictly in the last year, can you comment on the minimums in the act which governs child welfare in this province and the objectives of the welfare in providing basic minimums for children. I wonder whether we've gone below an acceptable state and, if so, how far below? How much accelerated can we see the risk for most of these factors, which have been identified by research which is now several years old, for different times? For example, the offered research is at a time when we had many fewer people out of work, many fewer people on welfare and many fewer children as part of those families.

Dr Steinhauer: I wish I could answer your question, but I can't say how far below. I certainly feel we were already below, even before the latest round of cuts, and we are getting further below all the time. That isn't that I'm saying the answer is just to handle everything by specialized treatments. My goal primarily — I've devoted the last seven years to trying to help parents get most children off to a better start and to mobilize the community to support families to do this.

It's unacceptable. It's hard to acknowledge that your child is having a major problem. Most people would hate to go and get help for that, and they avoid it until someone, often the school or a family doctor, finally presses them into it. Then to get to the point where you've actually done this and be told, "Sorry, but we can't do anything for eight months," and the child may at this point be out of control or his anxiety is so great that the child isn't attending school — this represents an intolerable situation. It shouldn't be this way.

Mr Kennedy: You certainly agree that we are beyond the point of minimums, where we're now starting to

generate problems that are not to do with the natural environment out there but have to do with how we respond to it.

Dr Steinhauer: Absolutely.

Mr Rick Bartolucci (Sudbury): Doctor, thank you very much for the excellent material, and certainly it does reflect reality in society nowadays. You've commented that children's aid societies can't keep up with the demand for their services so they raise their threshold. You and the previous speaker and previous speakers on other days have indicated that adolescent programs have suffered, and we all are concerned with the rise in youth crime. Is there any correlation, or could you give us some reasons there is this increase in youth crime?

Dr Steinhauer: I presented last week to the standing committee on justice and legal affairs in the House of Commons, and I think there are a number of factors. I think one of the major ones is the decreased time parents have to spend with children during that critical first three years. Two of the qualities that have been very strongly correlated with not becoming delinquent are the capacity to form empathic relationships and the ability to control feelings and not have them bubbling over all the time.

Someone mentioned Dr Richard Tremblay, who's done outstanding work in prevention of violence in the public schools. He lists a triad of three factors which allow him to identify in kindergarten children who are likely to go on to become delinquent and/or violent in adolescence. If there is a capacity for empathy with others, which is a direct result of having had a satisfactory attachment, which in turn is a direct result of having had high-quality parenting and child care in the first two years of life, the risk is cut by four fifths. That's one major factor.

A second factor has got to be the frustration that everybody in society is feeling.

Another factor has got to be the overloading with violence on television, which for some reason or other seems to tend to create violent behaviour in kids who are poorly parented but not in kids who are well parented. I don't know whether that's because the well-parented kids aren't allowed to watch as much of it, or whether having had a good attachment serves as a protector against it.

But certainly the degree of selfishness, the tone in our society — if you look at the letters to the editor of a paper, people aren't just putting a point forward, but in roughly a third of them every day, someone is trying to rip out somebody's guts in the process of making a point. We have not become, if you look at the way people drive these days, a society that is interested in understanding somebody else's point of view and working things out. We want what we want, and to hell with everybody else.

Mr Laughren: You've seen Bartolucci drive.

Mr Bartolucci: Only after question period.

1640

Mr Laughren: I know everything doesn't come down to dollars and cents, but there's no question that the cuts we've seen, and I don't think the government would deny this, are to save money; it's not to give us a better society so much as to save money. They would argue that at the end of the day that gives you a better society. I understand that. But you say in your paper that for every dollar spent on kids in these areas, there's a \$7 saving. How do

you deal with the time lag there? Everybody would jump at spending a dollar to save seven; even crazy finance ministers would jump at that opportunity if they were convinced they'd see that saving in their lifetime — or in their first mandate.

Dr Steinhauer: I would say two things, Mr Laughren. First of all, I don't think a dollar spent on children is going to save \$7; I think it's a dollar spent in certain ways on children, and on a certain group of children, the most high-risk children. Otherwise, the savings are going to be less dramatic, although I think the savings can still be there.

I recognize that there's a need for cuts, and there are areas where cuts could be handled if they were solidly based, if what we know from research were used to direct the scalpel. But my concern has been — and this is not just this government; our problems didn't just begin when this government came into office, although they have accelerated since then. But the problem has been that the cutting has been with a blunt axe rather than with a scalpel. Research can tell us some of the things we could safely cut without doing violence to too many people. But I think we haven't been using those principles.

Next, as far as the public is concerned, I think the public has to hear things again and again.

As to that time lag, we've got two problems there. One is politicians, who tend to think in terms of, "What can I do that will bear fruit by one year before the next election?" The other thing is the general public; the general public has to be much more on side.

You talked about the attitude in the general public, which I think was beautifully analysed by the Ekos research group up in Ottawa, who talked about the number of people who themselves are feeling embittered. They're working harder, they're taking home less, their real income is less, and they're angry about it and they're insecure about their future. They've needed a scapegoat, and they've taken two groups; one of them is big government and the other is anyone who is getting anything from government.

I don't think it's fair to say that we don't care about children. I think we care about children, but I think we care mostly about our children and our friends' children. We've got that North American attitude that other people, the people who screw up when it comes to bringing up their children, are responsible and they should be ashamed and that's not our problem. Well, it is our problem, because we have to live with the effect of those kids on our streets.

Mrs Munro: We appreciate the opportunity to have you here again and listen to your comments. There are a couple of questions I have, and they relate directly to the comments you just made when you were talking about the fact that this is a fairly long-term thing, in terms of the fact that we're looking at cuts for a long time. I noticed in the material you brought the chart that was 1983, so obviously there are some long-term things that you have identified here. I have two questions. First, could you identify for us a time when you think it was a better time in terms of an appropriate level of funding?

Dr Steinhauer: I think, of course, in the late 1970s and in the early 1980s. I can't talk about all systems, but

I do think, from the two systems in which I've worked, which have been the children's mental health system and the child welfare system, it was possible. I can remember in those days thinking it would be really useful for a child to bring that child into care. Now I really shudder before I take a child into care and I would only consider it when I am so sure that that family is going to be so damaging. I've always been reluctant about taking kids out of families. The point is that at one time I could be sure there would be careful planning and continuity and that workers would have the time to work well with the child and the foster parents. With the amount of time each worker has now to spend on each case, I think the situation has deteriorated greatly since then.

Mrs Munro: My second question is related to the fact that obviously this government has made a commitment to the reinvestment of dollars. We're talking about \$5 million for the children's nutrition program and the reinvestment of money in health care, as well as \$600 million in child care. When you talk about the scalpel approach, how would you spend that \$600 million?

Dr Steinhauer: I think the first thing I would do is sit down with a number of leading people, preferably people who weren't the director of a particular service or weren't limited to a single service area or a single profession, and I would really try to get them to give the pros and cons of a number of alternatives. Certainly some of that money I would commit to the kind of prevention services I was talking about last week, home visiting, which I know is an area you have earmarked some money for.

Second — I really haven't resolved in my own mind the best way of getting more kids who need it high-quality child care, but that certainly is something where the payoff is great. As you get to children who are older, who have more difficult problems, they represent a less satisfying investment, because you're going to get less bang for your buck. On the other hand, those kids are much harder for society and they're much harder on society. Somehow, it's the balance between dealing with established problems but with a good healthy emphasis, purely on health promotion, for children at risk.

The Chair: Doctor, thank you very kindly for coming again today and giving such excellent testimony and information. We really appreciate it very much.

The committee will recess to set up our teleconferencing call with Chris Sarlo from Nipissing University.

The committee recessed from 1648 to 1721.

CHILD POVERTY ACTION GROUP

The Chair: We reconvene the committee meeting and call our next witnesses, the Child Poverty Action Group. Welcome. Thank you for taking the time to prepare and come visit us. I ask that you introduce yourselves, and please proceed.

Ms Christa Freiler: So we're on before your teleconference?

The Chair: Yes. We have to reschedule it.

Ms Freiler: My name is Christa Freiler, and I'm the program director with the Child Poverty Action Group. I am joined today by my colleagues Susan McGrath and Dr Brigitte Kitchen, and we're going to be sharing the

presentation. We hope to take no longer than about 15 minutes in presenting, and then we'd have time for your questions.

The Child Poverty Action Group, as you may know, is a public interest advocacy and research organization committed to ending child poverty in Canada. We were founded in 1985 and we are active members of Campaign 2000, which you may have heard of. We'd like to thank you very much for the opportunity to appear before you today.

In our presentation, we would like to focus on three points:

(1) The social spending cuts in Ontario reflect, from our point of view, a policy of both abandonment and betrayal of families and children being carried out by both the federal and the Ontario governments.

(2) Municipalities, communities and individual families cannot possibly compensate for the withdrawal of support from the two senior levels of government.

(3) It is not only individual families and children who will suffer; it is all Ontarians. Social cohesion and the quality of life in our communities will deteriorate.

First I want to talk briefly about the federal abandonment, which we think happened first, followed by provincial betrayal. The cuts to social programs couldn't be occurring at a worse time. Not since the Depression has the labour market been less successful in providing economic security for families. We've all heard about the high unemployment, corporate downsizing, the growth of the contingent workforce and public sector dismissals, which are all contributing to the increasing vulnerability and poverty of families.

In the past, we've had social programs to protect family incomes and to support families in times of stress. Now just the opposite is happening. The social institutions we all built up over the last four or five decades to protect against risk are being dismantled at precisely the same time as the risk of insecure or no employment is growing for families.

With the introduction of the Canada health and social transfer, the most recent changes to unemployment insurance and the withdrawal from its child care commitment, the federal government has virtually abandoned families with children to the provinces. So how has Ontario responded?

The question I think is partly answered by your terms of reference, which list the cuts we've seen in the last year. There is no question that the federal government set the stage for the assault on families with children which we're seeing in some provinces, yet not all Canadian provinces have responded in the same way. Provincial governments do exercise choices about how they address the CHST. While Ontario and Alberta are cutting services and benefits, British Columbia and Saskatchewan, for example, are currently introducing new provincial child benefit programs for modest- and low-income families.

I'll turn it over to Susan McGrath to talk about municipalities, communities and families.

Ms Susan McGrath: The second point we want to make is that these municipalities, communities and families cannot fill the gap that is left by public withdrawal of support. We've already seen that municipalities

are stretched to their limits. They're having to deal with the fallout from the decisions of the other two levels of government. As we saw on the weekend, the *Toronto Star* recorded some difficulties that municipalities are experiencing in trying to cope with reductions. The Metro Toronto community services commissioner has been quoted as saying: "When will we have cut too much? What is the critical point when we will have done too much damage?"

Reduced funding has severely constrained the capacity of municipal governments to maintain public services which they deliver. The coping mechanisms used by municipal governments include user fees, cutting staff, replacing highly skilled workers with less skilled staff, reducing hours of operation and closing some public facilities such as parks and conservation areas completely.

The second group runs community agencies. They feel less able to assist the people they wish to serve with the cutbacks. The community agency survey done here in Toronto found that over 100 programs had already been cancelled in 1995. Again, the agencies are using similar strategies as the municipalities: They are increasing user fees, reducing paid staff hours, increasing volunteer staff hours, and despite these compensating strategies they cannot cope with the reduction in government funds. There's an attached table here that shows you that a 15% government cut means all other sources, such as the United Way, must contribute 50% more money. The capacity is not there.

The third area is that we're expecting more and more of families in terms of informal supports. I think you've heard about the difficulties families are having in struggling to survive. There's increased use of food banks, clothing depots and shelters, which reflects the erosion of a basic income floor that was once provided by our social security system.

Pressures on families struggling to survive provide a glimpse of what is going wrong in our communities. In the end, we will have to pay for the damage done to the children and their parents by these unwise spending cuts. Brigitte will address the third point.

Dr Brigitte Kitchen: We see these changes as a serious threat to community cohesion. There is mounting research evidence showing the relationship between harmony or cohesion in a society and a healthy community. Trust, reciprocity and limited disparities in income are all essential to wealth generation.

How do social spending cuts threaten social cohesion? First, social spending cuts have sharpened the social divisions in Ontario society even more than the disparities poured on by the economic recession of the 1990s. Significant income disparities existed prior to 1995, as the table we have attached shows. Incomes of the bottom 60% of families with children fell from 1981 to 1993 while incomes of the top 40% went up. Welfare rate cuts and tax cuts will only exacerbate these inequalities.

Second, as more people are driven into poverty and desperation, we can expect to see an increase in what are being called crimes of poverty. A Nova Scotia study found that the number of charges for theft under \$1,000 generally increased in August and peaked in December, times when mothers could be under unusual pressure to supply school clothes and Christmas presents.

Third, social spending cuts of the magnitude and sort we have seen in Ontario impede the healthy development of children. It is well known that poverty poses a major developmental risk for children. In addition, many service cuts have been to preventive programs which might have ameliorated some of poverty's effects. For example, some municipalities have had to eliminate public health programs which provide support to new moms.

1730

We cannot afford to squander the lives of children growing up in poverty. We need everyone's talents and contributions. A healthy society requires healthy children.

We have a choice. "We either invest in civic development and social cohesion as common goods or provide services to contain disparities (such as prisons and gated communities) and protect the civil enclaves of the advantaged."

We join Michael Novak, a conservative theologian in the United States, in calling for a new ethic in corporate and government responsibility to strengthen the moral basis of the market system. Neither government nor the business sector can shut its eyes to the social destructiveness of current unrestrained market forces.

What should Ontario be doing? In the short run, we recommend two things: First, support the western premiers in calling for a national coordinated strategy to end child poverty, a priority item the premiers will be addressing at the first ministers' meeting in Ottawa later this week; and secondly, place a moratorium on further cuts to social spending in this province.

In the longer run, Ontario should heed the words of the editor of the *Global Competitiveness Report*, "The more market forces come into full play at the global level, the more governments and corporations will have to rethink, recalibrate their social role."

Recalibrating their social role requires the Ontario and federal government to be active and provide leadership in social policy. For the provincial government, this means preserving and enhancing the integrity of public institutions in our cities and across Ontario. The government of Ontario has a moral and constitutional responsibility to invest in the wellbeing of all Ontario's families and children.

Mr Laughren: I don't know all these folks well, but I certainly know of some work that Dr Kitchen has done, which is invariably good work, and I appreciate that.

You used some very tough words in your brief such as "abandonment," "betrayal," "assault on families." I wonder what provokes that kind of very strong language and I couldn't help but notice in your paper and in your comments references to limits.

Where are the limits on cuts to social programs and who knows where those limits are and when they've reached the point where society as a whole rebels and says — right now there's a fair amount of applause for what the government is doing out there; I don't think anybody should kid themselves about that, but I don't think the ramifications are being felt very much yet. I wonder whether or not there's a way you have, or anybody you know, of tracking the way these things happen when cuts occur, what the ramifications are out there in the community, given all the things that can

happen with cuts. Is there any way that can be tracked and some kind of analysis done on it?

Ms Freiler: There are probably 75 or 80 tracking projects going on in Metro Toronto and there must be hundreds across the country. The Federation of Canadian Municipalities, for example, being at the receiving end of a lot of this, has a project that's going to track the impacts in about eight or 10 municipalities across the country because some of these are provincial problems; a lot of them are provincial problems.

The Social Planning Council of Metropolitan Toronto and a number of other organizations and Metro community services were involved in tracking the impacts on agencies. Part of it has to do with getting information. The biggest problem I think is tracking the cumulative effects. Metro community services has been very good in pointing out that nobody seems to be aware of the fact that cumulative effects of federal and provincial changes, cuts to agencies, are really very serious; people may be tracking the impact of the CHST or provincial cuts, but it's obviously going to require collaboration and a longer time frame to track cumulative cuts. There are all sorts of organizations that have begun to do that.

Dr Kitchen: The basic measurement is, do we have healthy, productive children in the end or don't we? We look at what is happening in the United States, where more and more people are forced to live on the margin, what has happened in Great Britain and what has happened in New Zealand. Of course there is a limit to what you can do to people, and the limit is when the destructiveness of the policy decisions that are being implemented do such damage to the social fabric of society that they become totally unacceptable.

We can argue, in the interests of whose children are these cuts being implemented? If my children are going to benefit on the backs of poor children who are denied a future in this province, I don't think I want to be part of these kinds of decisions. That is a very dangerous kind of society and that's why we're using such strong language. We are very perturbed by what is happening.

Mr Laughren: I remember years ago talking to the head of a large company who had just gone through a massive downsizing and layoffs and I asked him how he knew when he had laid off too many people; it was a very big company. He said, "Well, the intention is to lay off more than you should because otherwise you'll never know how deeply you could have cut." When I look at what's happening here in Ontario I wonder whether that's not the thinking that underlies these cuts as well, not just the cuts to welfare rates to pay for a tax cut for well-off people but also the cuts in programs that are out there. I wonder whether or not that's what is behind it all: to adopt that corporate philosophy of cutting deeper than you know you should, otherwise you'll never know how deeply you could have cut.

Ms Freiler: It's interesting you should use the example of the corporate philosophy, because we've probably all been reading in the papers recently that a number of architects of corporate downsizing as a strategy have recently said they're sorry and regret having done it. A number of them have admitted that they've made a mistake, so maybe if we wait long enough the

same realization will occur within the government. It didn't work in the corporate sector. They feel they've gone too far; they see what's happening. As Brigitte pointed out, we don't need to look at just our own social indicators. Given that there are a number of countries that have been trying this strategy, we need only look to them.

Mrs Ecker: One thing I'm a little concerned about is the use of figures and statistics when we discuss what's happening. When you look at the use of the Daily Bread Food Bank, some of the figures they were releasing, for example, under the Liberals in 1989 it had doubled from what it was in 1986. In September 1989 you had the Toronto Star talking about a 100% increase in the number of people using food banks since 1986, and under the NDP there were dramatic increases in the number of people using food banks at the same time that welfare rates and spending on social programs were going up. Why would food banks and that kind of use go up when social assistance spending is going up and now you're saying that it's going up because social assistance spending is going down?

Ms Freiler: You probably have greater expertise around your table than we do around ours on that one, but there were other things happening. There's an elasticity in food that there isn't in shelter costs, for example. Housing costs were also going up at that time. Welfare rates were going up because housing costs were going up.

1740

Mrs Ecker: Money paid to welfare recipients was going up.

Ms Freiler: I know, but it was partially covering their housing costs. Remember, housing costs went up for many, many years in Ontario, and partially, welfare rates went up so people can afford a place to live. It seems that what always has had to go is people's spending on food.

Mrs Ecker: So rent control didn't help during that time?

Dr Kitchen: Can I answer this? Our group, with family services and the Metro social planning council, did a study called *The Outsiders*. We followed a statistical group of younger families, those under the age of 34, over a period of three years, and these were the so-called good years when the economy was growing, when we were prospering as a society —

Mrs Ecker: And welfare rates were going up again.

Dr Kitchen: And you're quite right. That's when there was also an increase in poverty, which was purely the product of what was happening in the labour market. Since the 1981-82 recession, we have never caught up economically, so the younger families were never given the same chance in the 1980s that the previous generation had in the 1970s. You have this already very weak labour market, as far as the younger families are concerned, and then we were hit by a recession. Of course the major driving force for the economic security of families is the labour market, it's the economy, and then comes government. But when the two fail families, then we have a disaster on our hands, and that's what we're here to draw your attention to right now. We're not saying that it is entirely because of the betrayal of government. It's also because of the downsizing and restructuring that was happening in the labour market.

Mrs Ecker: Even the previous government made comments about the increase in spending on welfare. Tony Silipo talked about recognizing the problem of needing to spend the welfare money better because it was inefficient, wasn't creating the kind of support you needed. How much welfare spending do we need? How much is enough? We're spending more now than other provinces per capita. How much is enough?

Dr Kitchen: We would agree that it is impossible to try and save the economic problems. The people displaced by the corporate sector, just with government social programs — the two have to go hand in hand, and that has always been the Canadian tradition since 1945, that we had a full employment policy and a very strong proactive social security policy. The two have to be seen as being connected, and you can't treat them separately.

Mrs Ecker: I agree. Economic growth and employment growth would be very helpful.

Mr Newman: My question is for the speaker on the far end. I'm sorry, I didn't catch your name.

Dr Kitchen: I'm Brigitte Kitchen.

Mr Newman: You mention children and their futures. I think we all care about the future of children. My question is, what effect do the \$100-billion debt and \$10-billion annual deficits have on the future of children in Ontario? Do you feel it robs our children and grandchildren and great-grandchildren of their futures?

Dr Kitchen: I think I already addressed this issue. We perfectly well realize that the debt is a problem, that it is a problem for us, that it is a problem for future generations. What we're trying to point out is that there are other ways of addressing the very serious problem of the debt, and we cannot fight the debt problem on the back of poor families and poor children.

Mr Newman: How would you solve it? Where would you make reductions?

Dr Kitchen: Where? Instead of having a tax cut —

Mr Newman: Would you increase taxation?

Dr Kitchen: The NDP government, and I blame them for this, had a Fair Tax Commission set up which produced a great number of proposals that would have increased the revenue to the government of Ontario. They didn't follow it.

Mr Newman: So is increased taxation the answer?

Dr Kitchen: No. A fair and equitable tax is, though.

Mr Newman: You mentioned an increase in revenue —

The Chair: I'm sorry, Dan, you've gone over your time. The Liberal caucus has the floor.

Mr Kennedy: I don't want to take away from your time, but a question was raised about the use of food banks. I think it's very clear to anyone who wants to look closely at the record that food bank demand went up because of the cost of high rent, because of the fact that welfare wasn't increased for inflation in the 1970s by the Conservative government and there was catch-up that had to be done. Only a partial catch-up was possible. Immediately upon welfare being increased, food bank demand went down. It's there to be seen in the same clippings Ms Ecker cites. There is a relationship, obviously, to the amount of support available.

I was interested in Dr Kitchen's comments about the idea of government trying to bring back some ethics, that it can't just sit quietly and supinely when there's a 54% increase in children going hungry directly attributable to its policies, the direct connection between the cost of a loaf of bread, the cost of rent, which is 30% to 40% higher in these cities, and then have that government, with its resources, still cut the money away from those families and from those children and still act puzzled about it.

The ethical part — you talked about a conservative theologian in some of the questioning. I know there's a lot of it going on in cities around Ontario, the different non-partisan groups that have been formed to try to look at the whole question of, how can we sit by when so many people are in evident suffering? I wonder if you could comment on that a bit more perhaps to help this committee when it goes behind closed doors trying to find some common ground on direction, the ethical part of what you raised?

Ms Freiler: Just one example: There is a momentum to create a conscientious objector status for people who don't want their tax cuts, and I think that's one of the things we're seeing across communities in Ontario. A number of church-led organizations are trying to come up with a way for people to give the money to something else and not take it, in the same way that conscientious objectors would object to other things that they feel morally opposed to.

Mrs Ecker: You can do that on next year's income tax form. There's a box for you to do that.

Ms Freiler: Correct me if I'm wrong, but I thought what you have on the income tax form is something that allows people to give it back and put it directly towards the deficit. That's not what I'm talking about.

Can I just quickly say something about raising taxes? The province of Saskatchewan managed to balance its budget not that long ago, essentially in the same climate as we're in now, by raising taxes. It's not an unheard-of thing in this country in the last five or 10 years. They raised taxes and the government was re-elected. It is possible to do.

Mrs Ecker: No, it wasn't.

Ms McGrath: I'd like to add that I think the issue around the moral responsibility as a society — and we're talking about, what's the bottom line? Where are we going to fall? It seems to me as if it's going to be dependent on popularity polls, and I think we have to have a richer and more meaningful discussion than around that.

People are not truly informed. People are looking at the short-term needs and in terms of, whose children are benefiting? That's the discussion we have to have. Look at the children who are not benefiting. If a government and a society are prepared to sacrifice one generation of children — it seems the generation now it's prepared to sacrifice — then it's prepared to sacrifice any generation of children. To think we're doing these cuts for some future child is very shortsighted and is not being honest. Either we protect and serve the children of today, or our responsibility to children is being questioned in the long term.

Mrs Pupatello: Thank you so much for coming today. Many of the presentations that come forward deal with statistics, and I think we can all use statistics one way or another to serve the message of the day that the government is trying to get out there. Can you put something in more of a format that really means something to people? What are the negative effects of the current Conservative government on children in Ontario? Getting away from numbers — because it's very hard to comprehend; millions of children is just too big to comprehend — give us a specific example, for example.

Ms Freiler: We've deliberately chosen not to come at the question like that because we're assuming you've got a lot of people — you had Paul Steinhauer talking earlier, you've had the children's aid societies, you've had all sorts of people —

Mrs Pupatello: A lot of statistics, that's the thing.

Ms Freiler: Do they just give statistics? We're not an organization that works directly with families and children. We hear anecdotally, we read what's in the newspapers and we also know the statistics. What we were trying to do is get the committee to look beyond just what the impacts on the individual people are — not that that isn't important — but to point out that the impacts to our society as a whole are as important.

If we were to make a recommendation, it would be that when you're writing your reports, expand your mandate and your focus, not just to focus on what's happening to individual people. That may be devastating, but I think what's going to happen to the province of Ontario in the future is equally devastating, and I think it should be an equally important focus of your deliberations and your recommendations.

Dr Kitchen: You see, you don't need statistics, you just need common sense to know that children need to have adequate food, that they need to have adequate housing, that they need a stable environment where they can feel safe to develop as healthy, productive future citizens.

Mrs Pupatello: Would you say now the majority of children in Ontario do not have that?

Mrs Helen Johns (Huron): The majority?

Mrs Pupatello: What are you saying, that that's what we need? Where are we at now?

Dr Kitchen: We are saying that 1.2 million children in Canada are living in poverty. The vast majority of them live in Ontario because this happens to be the largest province, so the majority of poor children live right here. Their future is at risk and we would argue that because their future is at risk, so is the future of all children, because I think the harshness, the cruelty, the destructiveness really filters down. What kind of example are we setting for future generations?

Ms Freiler: We talk about child poverty and we call ourselves that, but we're not only concerned about those children below that artificial line. "Poverty" is a relative term. People see themselves in relation to other people.

Mrs Pupatello: One of the presenters today made that point.

The Chair: Sorry, folks, our time is up. We're limited to a certain amount of time at committee. I want to thank you very much for your preparation, your presentation. You've stimulated a lively debate, and thank you very much for coming.

We will recess until Monday at 3:30. The subcommittee will convene across the hall in 210.

The committee adjourned at 1752.

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Pupatello, Sandra (Windsor-Sandwich L) for Mr Gravelle

Clerk / Greffière: Lynn Mellor

Staff / Personnel: Ted Glenn, research officer, Legislative Research Service

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Lundi 24 juin 1996

**Standing committee on
social development**

**Comité permanent des
affaires sociales**

Children's services

Services à l'enfance



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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
SOCIAL DEVELOPMENTCOMITÉ PERMANENT DES
AFFAIRES SOCIALES

Monday 24 June 1996

Lundi 24 juin 1996

The committee met at 1613 in room 151.

CHILDREN'S SERVICES

The Chair (Mr Richard Patten): I'm going to reconvene the standing committee on social development on standing order 125. We apologize for the delay, but we had a vote in the House and we must provide all the members with an opportunity to vote.

FAMILY SERVICE ASSOCIATION OF
METROPOLITAN TORONTO

The Chair: Welcome to the hearings this afternoon. You have a full half-hour at your disposal and you can choose to divide that between your speaking presentation and questions from the members. Whatever proportion that is, we will divide up the time equally between the three parties.

Ms Joan Mesley: Thank you very much for this opportunity to be here. I'm Joan Mesley, past president of the board of Family Service Association. I also just might mention that I'm a single mom and was lucky enough to have some subsidized day care too, so I've experienced things from all sides.

I just want to tell you a little bit about Family Service Association. I hope you all have some idea about us, but I'll just fill in a little bit of the blanks.

We were founded in 1914, and last year we served over 15,000 individuals and families in the Metro area alone, those going through stress, transition or trauma. We have a very broad degree of programs. I'm not going to list them all, but they cover all areas, from individual counselling to group counselling to partnerships with community agencies, and we actually provide service in 22 languages.

We are committed to advocating for public policy framed in social justice, which strengthens individuals, families and communities. That's why we're here today. This is certainly a part of that, and it exemplifies our mission, which is strengthened families and individuals in just and supportive communities.

It naturally follows that we expect parents to take maximum responsibility for their children, but at the same time, every industrialized country has recognized that even in the best labour market conditions, government support for children is both appropriate and essential.

It is our belief that provincial government policy should recognize the economic and social responsibility of being a parent; promote early intervention in order to further the establishment of positive life circumstances and outcomes for children; recognize that it is the

responsibility of government to support families in their essential roles; guarantee safety, adequate physical and emotional care and access to social and educational opportunity; and ensure that children have the first call on the province's resources, which is in compliance of course with the United Nations Convention on the Rights of the Child.

One of our major concerns is that it appears that many of the decisions being taken are being made in the absence of clearly stated objectives and principles. If you do have them, they're not clear to us. We believe this is a critical omission and urge the committee to articulate these principles and objectives and to move us towards the development of criteria to guide future funding decisions in relation to children.

Questions that need to be addressed to draw up these criteria include:

What are the respective roles of parents and government in support of children?

What is the capacity of the voluntary sector to fund and provide services?

What are the costs of services versus the cost of not providing those services?

What are the benefits of providing services?

We recognize we have a role in that and are addressing that as well.

Young families today are at a particularly serious risk of permanent marginalization. This is not new. As you know, before your government was even elected, there was Project 2000 and it was seen as a most critical area for us to address. It is in these families that young children are most frequently being raised, with the young families.

FSA's brief speaks specifically to income security for families with children and the broad range of community services needed by families with children. We make two main points.

First, cuts by the Ontario government in children's services, supports to parents and income security will have potentially far-reaching and long-term impacts that cannot yet be measured. If there is a sincere interest in understanding the impacts, the government should work closely with existing coalitions that are attempting, with extremely limited resources, to monitor these impacts. Any evidence that children are suffering as a result must be reviewed very seriously and should result in consideration being given to restoring these services to previous funding levels.

In the short term, we urge the committee to place a moratorium on any further spending cuts that may impact on children. In the long term, we urge the committee to do two things: develop an impact assessment tool to

apply to all government initiatives that determine the potential effect on our children, and explore the idea of establishing an Ontario child investment fund which is an earmarked fund to protect children from further cuts and to build an investment strategy for children in Ontario and for all our futures.

The second main point: The impacts of poverty are well-documented. The long-term costs to children are greater health problems, school dropout and unemployment. The long-term cost to Ontario will be greater disparity between rich and poor, which according to the World Bank results in less economic vitality. Those of you who read the *Globe and Mail* on the weekend probably saw an analysis of what's happening in California today, where we see that great extreme and the sudden cries that they must change it and reverse it, it's all gone much too far. I think we have a lot to learn.

1620

The Ontario government should make no further cuts in social assistance to families with children and should work with the other provinces and the federal government to begin to build a national strategy to reduce and prevent child poverty. This should include an integrated child benefit and strict enforcement of child support by the provinces.

I'm going to ask Rosemarie Popham to carry on from there.

Ms Rosemarie Popham: My name's Rosemarie Popham and I'm the director of social action at Family Service Association and the coordinator of a coalition of 50 organizations called Campaign 2000.

I'd like to speak briefly to the two components of our brief: first, to income security and, second, to community services. In regard to income security, I'd like to highlight two components. One is the private responsibility of parents, and the second is the responsibility of governments towards families raising children.

In relation to the private responsibilities of parents, we were very heartened by the federal government announcement in its budget that it was going to work with the provinces to enhance enforcement of child support for children. Family Service Association operates a program called Families in Transition through which we serve over 1,000 families each year who are going through separation and divorce and we're well aware that in Ontario fewer than 30% of child support orders are honoured.

Therefore we're very concerned to hear on the street, although this has not been confirmed, that the intention of the current government is to privatize the family support plan of Ontario and to reduce the efforts to enforce child support. We think this is antithetical to the direction we believe the government is committed to, which is to require parents to take the optimum responsibility. If indeed that is the direction of government, we caution that this is not in the best interests of children.

Secondly, in regard to the public responsibility for children, as Joan mentioned, in every industrialized country government takes responsibility for supporting families in their care for children.

Joan mentioned that the effects and impacts of poverty on children are well documented. Having reviewed the

previous submissions, you have had people speak very knowledgeably and articulately to those, and we include them once again in our own brief.

Family Service Association did an analysis of the cuts on social assistance to children using a framework that we've developed over the years called the Checklist for Testing Government Policy and which we apply to all policies at all levels of government, not just the social assistance cuts. The results of our analysis are contained in appendix A. You will see that according to our checklist, the social assistance cuts failed to measure up to the expectations that we would have of good government policy and received a quite substantial failing grade of 2 out of 21 on the criteria we've developed.

The division bells began to ring.

The Chair: It's just a quorum call. We can continue on.

Ms Popham: I'm okay. Are you all okay?

The Chair: Yes.

Ms Popham: You look flummoxed.

The Chair: I'm okay and you're okay.

Ms Popham: In addition to our concern about the cuts which we have documented, we are further concerned about the release of a UNICEF report last week which provides yet further information about Canada's failure to address child poverty. The results of the UNICEF report are based on 1993 data, which is prior to the cuts by the current provincial government. It found that Canada ranks 17 out of 18 in the industrialized countries in addressing child poverty, that our income disparity between those who have and those who have not in terms of children and their wealth is greater than 16 other industrialized countries, and that our government expenditures are failing to address the issue of child poverty.

The example they gave is that both France and Canada would have the same rate of child poverty were it not for government expenditures, but with government expenditures, children in France move from number 25 to a position of about number 6 or 7, so government expenditures reduce child poverty by about 75%. In Canada, government expenditures reduced child poverty by one third and we are still second from the end. We don't have to guess who the bottom of the heap is: It's the US.

The reality is that every industrialized country is grappling with this and is doing better than Canada. That was evidenced prior to the social assistance cuts, so I'm very concerned about what they will mean.

I'd like to suggest what Ontario can do. Joan made reference to that. At the first ministers' conference on Friday the federal government and the premiers agreed that they would work to implement an integrated child tax benefit. This could be our first chance to really develop a hedge in the erosion of child poverty that we're seeing. Since 1989, child poverty has increased 35% in Canada. Unless we come up with a plan, it's just going to keep eroding. The labour market can't address this. The fact that there now is something on the table that Mr Harris, along with the other premiers, agreed to I think is a signal that we may be able to address this really urgent poverty issue. I see an opportunity for the committee to begin to send forth some really supportive signals around that.

The second issue we want to speak to is in terms of community services. As Joan said, Family Service provides a whole range of services to children. Other deputants before you have spoken eloquently to child welfare, to child care and to children's mental health services. We'd also like to draw your attention to the whole range of services that isn't specific to your agenda but is essential for parents who are not identified as part of your review. I'd like to mention a couple of them to help you understand what it's like for people in the community and people we see.

Before doing that, I want to say that in terms of child care, Family Service is on record as having supported an adequate, equitable, accessible child care system. In the current environment we urge that Ontario maintain its commitment to well-regulated child care, that including the current system of regulated family day care, we maintain the previous decade's commitment to making child care a welfare service, not a commercial service, and that Ontario maintain existing standards and mechanisms for enforcement.

In terms of other services, I know that this committee is concerned about impacts on children. Several organizations are really trying to monitor that. One that has done an excellent report you might want to access if you have not already is produced by Metro community services, the social planning council of Toronto. Released in May 1996, it couldn't incorporate the actual cuts because many of the agencies, when surveyed at the end of the year, had not yet received their budgets.

Their findings, just in terms of youth, were that when you examine the programs that are either likely to be cancelled or which are under review as a result of the provincial government cuts, 50% of all programs for youth, 55% of all programs for preschool children — that doesn't include child care — 51% of all programs for women, 50% of all programs for low-income families and individuals, 49% of all programs for ethnocultural groups and 43% of all programs for refugees and immigrants are either known to be cut or at risk of being cut. That's like the whole infrastructure of services in Metro.

Two programs I'd like specifically to speak to that we deliver are purchase of service for counselling for low-income families and programs related to wife assault. There's a great deal more detail in the brief which I hope you will refer to, because I'd like to leave some time for questions.

In terms of the purchase of service for counselling for families, this is a program that for many years was provided and funded by the Ontario government to provide counselling to families going through crisis. The program was defunded in October 1995 and those moneys are no longer available. Essentially, this means that these families are no longer eligible for this service from family counselling agencies, of which there are over 40 across Ontario. Either those families have to pay from their very limited resources or the agencies have to subsidize these programs from their very limited resources. The long and the short of it is that many families which are low-income are no longer receiving these services, so even in asking what the impacts are on these families, it's more difficult to tell because we aren't seeing them as much as we used to.

In terms of programs related to wife assault, there's extensive evidence about the implications of wife assault on children. A Toronto survey has documented that a child was present to witness the assault of his or her parent in over 68% of cases. A lot of kids are impacted by wife assault. The Ontario government has cut significant funding to counselling programs for women who are victims of wife assault, for men who voluntarily come to programs and for children who experience violence in their homes.

As a result, many children no longer receive the support either that they got secondarily because their parents were working through this until the parent is actually charged. What's happening now is that the parent is still coming into the system, the father is still coming into the system, but a much more expensive system than one that's available voluntarily.

1630

Finally, in terms of a recommendation about what to do, we have a suggested solution that we'd like to put before the committee. Every political party of whatever stripe has made a commitment verbally to children. There is mounting evidence, I think, before the committee and in everyday life that an increasing number of children are vulnerable. We would like to propose a solution that we believe would protect children from future funding cuts regardless of which government is in power. It's not a fleshed-out idea but something we would like you to think about.

It would take those expenditures for children in critical services that are now available to them as well as some services their parents access that benefit them and put them in a protected fund, a designated, earmarked fund that would not be subject to deficit reduction as other imperatives impinge on the moneys available. Perhaps the first deposit in the fund could be through existing resources for child care and child welfare and counselling for parents in wife assault programs, whatever, but something to guarantee that we're making an investment in children and not allowing their programs to continue to erode.

Ms Mesley: I have just a few comments in summary. Some reductions in funding in the past 12 months have resulted in the immediate elimination of some services to low-income families such as counselling aid and programs related to wife assault. These areas of service have been ignored in the review, yet you can recognize that they have serious impacts on children. In relation to child care, child welfare and children's mental health services, we are very concerned about the limitations on these services.

It is imperative to attempt to develop a realistic overview of the impacts and their consequences. Historically, the impacts of poverty have been extensively documented as negative and long-term. Reductions in social assistance will certainly exacerbate this.

We have involved service users in informing us about the impact of the cuts on their lives, and their stories are very disturbing. In addition, our presentation has been informed by statistical data around the impacts of increased poverty. As we prepared for this presentation, it occurred to us that there appears to be no government

attempt to effectively monitor the impacts on children, nor is there a tool to help make informed decisions in the future. We believe that each of these should be developed immediately. I've said it before and I'm saying it again: Can we assume that this committee meeting is the first step in that direction? I hope so. We would certainly be interested in working with you if that were possible.

The Chair: Thank you for that wonderfully optimistic presentation. We have a little under nine minutes, two and three quarters of a minute per caucus. We will start with the government side.

Mr Dan Newman (Scarborough Centre): Good afternoon. My question is for Ms Popham. At the beginning of your presentation you talked about developing an impact assessment tool to apply to all government initiatives. Would that apply to the debt and deficit as well, the effect that would have on children?

Ms Popham: Yes.

Mr Newman: What effect would previous governments' deficits and accumulated debts have on children's futures?

Ms Popham: You mean if we don't address them?

Mr Newman: Yes.

Ms Popham: If we address the debt and deficit without paying attention to what we're taking from current generations, the effect that will have on current generations I believe is quite negative.

Mr Newman: You spoke about the proposed child investment fund. Would you fund this through new and higher taxation on retail sales and property?

Ms Popham: I don't know. The question you've just asked is a really good one, "Would you include the debt and deficit, and what would be the impact?" I think the reality is, the debt and deficit was created by past generations, and they have benefited from strong social programs, at great cost to what's currently going on.

Mr Newman: Sure, to our children.

Ms Popham: Yes. But to make children now pay for the fact that we didn't collect enough revenues in the past or whatever your particular take on this, or you overspent, whatever — there are different positions on this, but the bottom line is that now we've got this situation — that doesn't seem to me to make sense. Your question whether you would need to raise more money — underneath I assume you're asking, "Would you need more money to really invest in children?" The answer is yes, I believe you would. Obviously there's not significant money, therefore you would have to look at where those revenues would come from, so that would have to be part of the exercise.

Mr Newman: Is spending the answer to the problem that you see?

Ms Popham: When I look at France and I see what they've been able to do —

Mr Newman: Sure, but this is Canada, in all fairness, and this is Ontario. I'd like to get your thoughts on the budget where we've increased day care spending to \$600 million, the highest level this province has ever seen. I'd like to know what your thoughts are on that.

Ms Popham: I think that's great; that's going in the right direction.

Mr Newman: And the child nutrition programs?

Ms Popham: Obviously I think they're great, and that's exactly what I'm talking about. When you put more money into those programs, you are going to have very strong outcomes: You're going to have children who benefit; you're going to have a stronger economy. I don't think we're debating that. If you're giving me examples of where there's more money, I'm going to go, "Yes, that'll work."

The Chair: I move to the official opposition.

Mr Michael Gravelle (Port Arthur): Good afternoon and welcome. Your presentation was really quite extraordinary. It was very detailed, and you've managed to touch on so many aspects that I wish we had more time to talk about. There are some things I wasn't aware of myself in terms of some services you provide that will no longer be available or because you have to start charging.

I'm thinking particularly of the purchase of service for counselling program. You make a very good point that if people are not going to be accessing that program because of the service charge you now have and perhaps will be accessing the system through OHIP, ultimately we're talking about larger costs. I think that's a really good point you're making, that by not looking at the programs on more of a long-term basis or on a larger basis, what appear to be cuts in the short term ultimately cost a lot more in the long term. I'm impressed by your presentation in terms of doing that.

Also, you remind us that when you have a government that makes a cut of 22% to people on social assistance, 50,000 of those people affected are children. I hope you're right as well that what we are trying to do through this particular committee studying cuts in children's services will be a step towards making some changes.

Anything specific? You have many elements that are so positive. Is there anything you want to leave us with? I've probably yakked on and left only about a minute for you to respond to anything.

The Chair: That's right, Mr Gravelle.

Mr Gravelle: Is there one overall point you'd want to make to us, even in the child benefit you were talking about, if you had to find one thing that should happen that would make a difference from now for the long term? Again, even to be fair to the government, there are only so many things that can happen at once. If there's one overall message you'd want to leave, because there are lots here, what would that be?

Ms Popham: Let me just have an (a) and (b) part. The first is to work with the federal government. It's not something the province can do on its own; however, Ontario could take leadership. We have in the past. I think it is very important that we work on the integrated benefit.

Second, we have to find a mechanism to protect children in Ontario in terms of service cuts. These are vitally important. I would suggest you look at options like some earmarked fund or whatever, but look at how we can do that.

The Chair: Thank you very much, Mr Gravelle. Your time is up. We move to Mr Martin with the NDP caucus. 1640

Mr Tony Martin (Sault Ste Marie): I apologize that I wasn't here for the beginning of your presentation. We

were upstairs celebrating the arrival of our new party leader today and I wanted to be there for that.

Just briefly going through it and listening to the end of your presentation, it sounds like you've put together a very informative package, challenging and also constructive in what is presented. Your last comment about this being the beginning of something: I just don't know. I despair in fact that it's the beginning of anything. We're on this roller coaster that's going downhill. We've heard the impact to families and children documented in this place for the last few weeks as people have come forward. There just doesn't seem to be anything the government can present us with that talks to us about the impacts and how doing what we're doing now by way of taking money out plays out down the road in terms of what we will spend to fix what we've broken.

Ms Popham: There are some excellent mechanisms and work that has been done in that area. The children's defense fund has done some excellent work in the States, if you're interested. They have costed out —

Mr Martin: So that information is out there.

Ms Popham: Yes. It's American, but it gives some insights. They have actually done the work; it's quite rigorous. You can access that.

Mr Martin: We had a woman in here a week or two ago from the Indian friendship centre in Sault Ste Marie, which is my home community, where they have lost their community and family development worker and they've lost funding for their Little Beavers program. She was desperate that they might now take away the funding they have for their nutrition program. Mind you, we're assured the nutrition program will stay. That's a place they're putting money in, and like you, I'm thankful for that.

The final question I have for you, in light of what you've said and the need for us to be supporting kids and families, is, does it make any sense to take out of the pockets of the poor 21.6% of the money they use to feed kids at home, and then on the other hand put a portion of it back in terms of nutrition programs in schools and in other institutions so that kids can get fed who aren't being fed at home? Is that logical to you?

Ms Popham: I have two responses, and maybe Joan would like to respond in wrapping up.

It isn't logical from a social justice point of view; moreover, it isn't logical from an economic point of view. All of the research indicates, and the World Bank is certainly a credible reference, that the larger the gap you have between the haves and the have-nots, the less potential you have for economic vitality. A decision that takes money away from the poorest and at the same time, through the tax benefits, gives money back to those who have most is increasing that gap, and therefore decreasing our long-term potential for economic vitality.

In terms of the specifics about putting money into nutrition programs as opposed to giving parents more money so they can purchase the food programs for themselves, I would think that nutrition programs that are targeted to poor children don't have a great chance of long-term viability anyway. The nutrition programs that have worked in all those countries that have good school programs for nutrition are universal programs, and that's different than the direction we're going in. Programs

targeted to poor kids don't often work in the long term; they lose political credibility.

The Chair: Thank you kindly. We're over our time, actually. I want to thank you very much for coming. It was a very fine presentation, very thoughtful, and the committee will certainly deliberate on your recommendations and thoughts.

ORGANIZATION FOR QUALITY EDUCATION

The Chair: I would like to call forward Mr Bachmann, who is president of the Organization for Quality Education. Mr Bachmann, you know the instructions. You have a half an hour and we'll divide up the time remaining for the three parties to ask questions of your presentations. Welcome today.

Mr John Bachmann: My name is John Bachmann. Thank you for giving our group, the Organization for Quality Education, pronounced OQE for short, a chance to speak to you today.

A little bit about OQE. We're an Ontario-based group of parents, teachers, principals, trustees, business people and post-secondary academics who are concerned about the state of kindergarten to grade 12, publicly funded schooling in Canada. While a great majority of our members are in Ontario — we have approximately 1,100 members — we also have members in every region of Canada and are working in concert with similarly minded groups outside the province, such as Teachers for Excellence in British Columbia as one example.

We are here today to address the possible effects of spending cuts on children in Ontario. My presentation will focus primarily on junior kindergarten, but must also touch on a few larger but inextricably linked issues.

Firstly, we need to ask a few questions. Is there a need for junior kindergarten? OQE feels there is a need for some form of early assistance, at least for disadvantaged children. The effectiveness, and especially the cost-effectiveness of preschool intervention for other children is questionable. That's even backed up with the Perry preschool experiment where the improvement in learning achievements is much more pronounced for the disadvantaged than it is for the more affluent students in that experiment. Whether this intervention should be junior kindergarten, as it has been delivered to date, is another issue.

Another question: Are children being hurt by the fact that school boards are dropping JK programs to cut costs? OQE's answer to that is yes and no. Yes, but we feel that disadvantaged Ontario children have been hurt for some time by a school system that has been unresponsive to their needs, and no, the cuts are not the decisive issue; they have simply served to highlight long-ignored problems and, OQE hopes, to act as a wake-up call.

If there is a need for, and a definite cost-benefit attached to, early childhood assistance on a targeted basis, how can this be met in a time of limited resources?

At this point we need to put our premises on the table. No doubt a number of you will disagree with these, but I have to let you know where we're coming from.

OQE does not believe that there are billions of untaxed dollars waiting to be harvested through changes to tax legislation in Ontario. We feel that, for the most part,

individual citizens are now being taxed to their limits and possibly somewhat beyond, if the election results and Mr Harris's latest approval ratings are any indication. We also believe that, by and large, Ontario corporations are being taxed at the limits of what a competitive global economy will allow. Consequently, we feel as a society that we have to learn within our means and that means we must stop garnisheeing our grandchildren's wages as we have been doing for the past two decades.

If raising taxes is not an option, we have to start finding new ways to deliver desperately needed services like preschool programs for the disadvantaged. Yes, there are children in need, but those needs will not be met by partisan politicking. They will not be met if those within our education system refuse to relinquish positions of privilege and power.

We will take a giant step towards meeting the needs of Ontario's disadvantaged children when we admit that these needs must be met primarily through the family and through the community, not through government agencies or schools. As the management guru and social critic Peter Drucker argues, for the 21st century we need to set up a social sector to complement the traditional private and public sectors.

Whether it's JK or high school, we have to find new ways of getting the community back into our schools. That's going to be quite a challenge because for decades those in the ministry, board administrations and principals' offices have been patting concerned parents and alarmed employers and post-secondary educators on the head and telling us to keep baking cookies and leave teaching to the experts. The disdain for parents and other outside stakeholders that most public schools have has to be experienced first hand to be believed. I personally have experienced it and many other OQE members have experienced it.

It's also going to be quite a challenge because generally parents, most often both working, sometimes non-English speaking, are not clamouring to get into our schools. Not surprisingly, the greater the need for parents to get involved because of problems with their kids at school, the less likely it is to happen. But for the sake of our children and our society, we have to find new ways to get this involvement.

In this light, getting families and the community involved in schools sounds positively utopian. But OQE feels such a paradigm shift — please pardon the use of the buzz phrase, but I think it's really appropriate here — is attainable but does admit that we're talking about a changing course that, while it must start today, will likely take a generation to complete. In the meantime, to children suffering as we sit in this room, this is all just so much philosophical gobbledegook.

1650

What specifically can we do today in the Ontario school system to deflect three- and four-year-olds from a path headed for the welfare merry-go-round and how can we do it with ever fewer resources?

First, we have to get rid of the top-down, ministry-to-principal bureaucracy that is an impediment to substantive change. A highly politicized and ideological bureaucracy in school board offices and at the ministry, trying to react

in a world which is currently doubling its information base every 18 months — that's every six months in the computer industry — won't work. Let communities define their own schools on non-sectarian and non-racial bases by enabling charter schools within the public system. Experience in many jurisdictions, from the slums of Los Angeles to middle-class New Zealand neighbourhoods, has shown that charter schools draw in community resources and bring new approaches to old problems.

Second, let these charter schools experiment not only with program focus and instructional methods, but with organizational structure as well. We can't afford to have teachers costing more than \$70,000 a year, salary plus benefits, handling classes of nine-year-olds. The prospect of having them care for four-year-olds is nonsensical.

As in other professions such as law and medicine, we have to find ways to leverage the efforts of increasingly beleaguered teaching professionals. Perhaps teaching masters could oversee groups of classroom instructors, the latter drawn from our large pool of overeducated and underemployed generation Xers. Unconstrained by bureaucratic shackles, a community may decide to offer JK and kindergarten, not in the school but in local community centres, using volunteer and part-time paid parental involvement. The money saved could be used to fund more intensive and earlier remediation for troubled children in grade school.

These are just a few of the ideas that have worked in other jurisdictions. They can work in Ontario.

Third, we must bring enhanced accountability to our schools. Education is not a simple process. We will never get complete agreement on what constitutes an appropriate education for everyone, but we can agree on some tangible learning results: literacy, numeracy and an understanding of the historical, societal and scientific context within which we live, all identified through clearly defined learning objectives. Once these objectives are defined and curriculum prepared — which by the way can be done in a matter of months, because we don't have to reinvent the wheel. These materials are readily available in numerous other jurisdictions.

That's exactly what the American Federation of Teachers just went through, that exercise of collecting material from around the world, putting it in a package and getting it out into American schools. I'm not saying we should emulate everything that's going on in American schools, but that's probably one pretty good idea.

Once these objectives are defined, we must test to see how each student is doing. We must publish the results of these tests on at least a by-school basis to allow us to learn what works and what doesn't and to target remediation at students early in their school careers. Contrary to the view of those educators who criticize standardized testing as unfair to disadvantaged students, these students are the greatest beneficiaries of increased accountability.

Fourth, we must subject all levels and parts of the system to a sunset analysis. OQE's suspicion is that most elected boards of trustees and much of the Ministry of Education and Training would have trouble justifying their continuance upon a thorough review. This would allow the redirecting of substantial resources to problem areas. Please don't misunderstand me. I'm not saying

there are incompetent, incapable people at the ministry and at the board. There are very capable and talented people there, but those talents can be better directed in other parts of the system where they will provide much better effect.

Ladies and gentlemen, Ontario preschool children are suffering as we speak. As a province, we literally can't afford to cling to outdated, power-group-based paradigms that say: "We're all right, Jack. Just send more money." We need substantive changes such as charter school legislation that will unlock the resources that are already within our communities, but presently shut out of our schools. The children of Ontario need your leadership and action on these issues.

The Chair: We begin our questions with the official opposition.

Mr Mario Sergio (Yorkview): If you had one particular recommendation, one that would alleviate the problem, what would it be, in your view?

Mr Bachmann: One recommendation?

Mr Sergio: Yes, that you would make to the government.

Mr Bachmann: I think it would be to pass legislation enabling charter schools, because that's planting a seed that I think will blossom in thousands of ways that we can't predict yet.

Mr Sergio: So privatizing schools?

Mr Bachmann: We don't consider that — no, this would be within the public system.

Mr Sergio: Within the existing system?

Mr Bachmann: Within the public system. You allow communities to charter their own schools within the public system.

Mr Sergio: No control, no supervision?

Mr Bachmann: The control is that you hold them accountable for the results. You will test them to make sure that the kids are learning what they have to learn.

Mr Sergio: What mechanism would you put in place to see that that is working properly, effectively, to the satisfaction of parents and government?

Mr Bachmann: By testing that the instructional outcomes have been achieved and reporting those instructional outcomes publicly.

Mr Sergio: So you want to have a pre-testing mechanism in place, let's say?

Mr Bachmann: Yes. Well, you'd have to have one for each grade level, subject area and so on, yes.

Mr Sergio: You wouldn't consider that a sort of "Let's go private and pay your own way"?

Mr Bachmann: I don't see how we're making anybody pay. The parents would send their children to either the local neighbourhood school or if they chose to send them to one of the charter schools, they could do that. That would be their choice.

Mr Sergio: You're saying that this can be done through the present school system, if you will.

Mr Bachmann: It has been done in many other jurisdictions through the present school system.

Mr Sergio: But you're saying, then, do it through the same system but not with taxpayers' dollars.

Mr Bachmann: Oh, you'd use taxpayers' dollars. What you do is you bypass the ministry, you bypass the

boards and you allow the community, parents and so on to define the school as they see fit. They staff it, set up the program whichever way they would like, but at the end, though, the children have to learn specific things that the province mandates as necessary.

Mr Sergio: But you're just saying, "Don't get the government involved; don't let the ministry get involved." How are you going to do that if you don't get the ministry, the government involved?

Mr Bachmann: I'm not saying don't get the ministry involved at all. I'm saying that you have a much more limited role to play in a charter school scenario, but they still have a very valuable role to play.

Mr Gravelle: I'm certainly curious about it. I'm curious as to how they work. You mentioned jurisdictions where they do have them and where they have worked. I apologize, I'm not familiar with them, so I'm curious as to what jurisdictions. You mentioned New Zealand and I think the States. Tell me about some of the charter schools in some of those places and how they work. It strikes me as being a difficult thing to monitor, because if I've got it right, there's no school board, there are no trustees; it's parent-run in every sense, which —

Mr Bachmann: It's a council of parents and teachers.

Mr Gravelle: Yes, which superficially sounds like an interesting idea, but I haven't given it obviously enough of an in-depth sort of look at it. Tell me the schools that work or that you would say work?

Mr Bachmann: Certainly New Zealand, back in either 1988 or 1989, basically chartered its whole system. It is working in New Zealand. The teachers are still getting used to the new order, but I have spoken personally with people who are on school councils in that scenario and they do say it works and they're very happy with the education they're getting.

Mr Gravelle: Is there a statistical confirmation of that? One hates to always pull out statistics, and I'm just as critical as others when they're used in a number of ways, but has there been some study of the system, in other words? If it was 1989, one would be curious to see if there are some results that show this system actually works better or works the same.

Mr Bachmann: Okay. I know of one, for example, in the slums of Los Angeles, a wonderful woman named Yvonne Chan set up a charter school and I would be very glad to get you the achievement test results before and after chartering for that school. There are a number of instances like that, but that's the one that comes to mind because they've actually made a videotape of her situation. Maybe we can share that with you as well. These are slum kids, and they were achieving, by the end of the changeover to the charter process, at middle-class levels.

Mr Gravelle: I'm sure the committee would be pleased to get that information.

Mr Bachmann: I would be very glad to forward that to you.

1700

Mr Gravelle: Is your dream or plan that this would be something that could literally work throughout the entire public school system? Is that what your aim is?

Mr Bachmann: Yes, but we don't feel that we know what's right for everybody. We see this as being kind of

an incubator and we see charter schools as playing a role in pockets of the system. By acting as experimental sites for new ideas and so on, that they would then spread through the rest of the system.

In Canada, probably 80% of parents will still choose to send their kids to the local neighbourhood school, which is great, but wouldn't it be great if that local neighbourhood school had the benefit of all of these ideas that were being tried in these experimental sites?

Mr Martin: You make some pretty dramatic recommendations re changes to the system of education that we've built up in Ontario over a fair number of years, some by trial and error, but mostly, I think, based on a lot of work done by a lot of concerned, interested, well-educated, well-intentioned individuals. I would argue anywhere that the system of education that we have in Canada and in Ontario today is the best anywhere.

Mr Bachmann: The international test results don't bear that out, sir.

Mr Martin: Well, they do. They do when you consider that in Canada we educate everybody. In some of the other jurisdictions that sometimes do better in particular areas, it's very discriminatory in terms of who gets to go to school and who doesn't and who gets to move forward and who doesn't.

Some of the information I have on the actual success of what's happening in places like New Zealand and New Jersey and some other jurisdictions where charter schools are becoming the norm is in fact not supportive of the finding that you're presenting here today. It's quite the opposite and I will, if the researcher or the Chair would like, bring some information to this committee that will show that in fact is the case.

In some of the communities in these jurisdictions, what you're finding is anybody who can afford education with this new system is moving out to the suburbs and the inner cores of our communities are being left to their own resources to find ways to educate the children who live there, and it in fact isn't happening. What's happening in places like New Zealand and New Jersey is the leading industry is in the law and security area, because people are literally killing each other over the scarce resources that are now available.

Who is the OQE exactly? Could you explain to me the organization and how it's set up, who the executives are, whom you're accountable to, what meetings you have, how information flows, all that kind of thing?

Mr Bachmann: We have a board of directors and we have an executive that meets every month. We meet in Toronto. We have members from, as I said before, all across Canada. It was started by a school trustee, a professor at OISE and some concerned parents who were getting nowhere trying to get some basic questions answered in their local schools.

Our raison d'être is to provide information on what is happening. With all due respect, you may think we have a great system in Ontario, but it can be better. It can be very much better in things as fundamental as reading, where a phonics approach to reading has been fought by the ministry for decades here in Ontario in the face of all research to the contrary.

What we tried to do was to say we think that we can do better in Ontario and we have studied research in

different jurisdictions and tried to promote that. We certainly spread it among our own members. We have four or five newsletters a year and I would be glad to send you a copy of that. I think you'll see that we are very reasoned and very meticulous in our research and we're trying to promote change on a reasoned basis — and on a cooperative basis as well. We're not trying to be confrontational, but we are encountering a lot of confrontation.

Mr Martin: What research have you done? It would have been interesting and helpful actually had you come here today with a bit more than a page of information, with documented research to back some of —

Mr Bachmann: Thank you for pointing that out. I was going to have a preamble before my statement that I know what it's like on these committees. You come and you're absolutely snowed under by paper, and I was going to mention that there are many studies. Joe Friedman in Alberta is the leading proponent of charter schools. He has amassed a wealth of data on the charter experience around the world. Harold Stevenson, a professor, has been looking at international comparative studies. All of this information is available.

We go through about that much research in a year at our meetings and I could have brought it, but there's not too much point. I would much rather find out what it is that you're interested in. I've already highlighted a couple of things, a video on the charter school experience. The fact that you have some negative reports on what's happening with charter schools, I will try to counter that with positive reports that I have. But I assure you there is a lot of data behind the contentions that are made there.

Mr Martin: I just say that it would be helpful to our researcher if in fact we had that information so that we could include it.

The Chair: We'll be happy to receive it, yes.

Mr Bachmann: Okay.

Mrs Julia Munro (Durham-York): I have a couple of questions here that relate to specifics that you have raised in the paper that you've presented us with. In the summary there, your first point about the "preschool children are suffering educationally" and then in the middle column of the part below, "Is there a need for junior kindergarten?" you suggest there is a need for some form of early assistance.

I just wondered if you'd comment on the fact that there has been a fund, currently at \$10 million to go to \$20 million, to deal with children who have speech and hearing problems and if you're aware of that as an initiative of this government?

Mr Bachmann: I wasn't aware of that as we were focusing on the junior kindergarten issue specifically, but that's certainly a very laudable development.

Mrs Munro: The second one I should ask you about is the children at risk program, which is looking at children at risk between the ages of zero and six, and again a \$10-million investment in that group. I just wondered if you were aware of that kind of investment that we were making.

Mr Bachmann: No. Again I'm aware that there are initiatives that are being undertaken, but you have to

admit that \$10 million doesn't go a long way with hundreds of thousands of children. So that's why our group is looking at what it is that we can do on a more global level, but certainly that's a very positive development.

Mrs Munro: I would just point out that this is of course identified children at risk and, as you yourself have pointed out in your own presentation, you don't necessarily have to deal with all children. That is the intent of this fund as well, to deal with children at risk.

I wondered also if you could comment on whether you believe that children are overorganized. We hear a great deal about the need to shepherd children into situations of organization at a very early age. I wondered if your research shows any kinds of results in terms of putting children in those kinds of organized situations at an early age.

Mr Bachmann: Not specifically on that topic, but if you take a look at the Perry preschool experiment and a few others like it, the socialization process has a positive effect on the disadvantaged children. I guess part of that is the organizational aspect of it.

Mrs Munro: But you identified, quite correctly of course, that that project was designed specifically for disadvantaged children. I just wondered whether or not you had any evidence that would suggest other children — do we give our children time to dream? Do we give our children time to be creative? That's the question I'm asking you.

Mr Bachmann: Probably not as much as we should, but at the same time, once they get into grade school, we maybe give them too much. I think at the kindergarten and junior kindergarten levels we tend to overorganize that. Certainly by the time the kids are at grades 2, 3 and 4, we find far too much dreaming going on and far too little focus on learning the basic skills that they're going to need to cope later on.

Mr Newman: In your summary, in the last point, you speak about eliminating elected school board trustees and other ministry programs as a way of saving resources that could be redirected. What about reducing the number of school boards, what we'd like to see there with the Sweeney report?

Mr Bachmann: First of all, we addressed the issue of the elected boards of trustees. We see properly constituted school councils as being the logical replacements for the elected boards of trustees. Now, if on top of that it makes sense to look at the administrative shells we have in place that those trustees purportedly control — if anything, I think we should be decentralizing a little more; I don't think we need quite as much in the way of large boards.

Already there have been moves made to get curriculum development out of the school boards, because you've got a tremendous amount of duplication going on, and then you've got duplication going on in the ministry because they're trying to reinvent curricula available on the Internet, through all sorts of other places right now. We've got people sitting within a few blocks of this place grinding out millions of dollars worth of work that's already been done somewhere else. Yes, there are probably some opportunities for cutting administrative costs in the system in that way.

The Chair: Mr Bachmann, thank you kindly for your stimulating and provocative presentation. We would certainly welcome any studies you have at your fingertips that address the issue the committee faces; we'd be delighted to receive those.

Mr Bachmann: I'll make sure you get them.

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ONTARIO PUBLIC SCHOOL BOARDS' ASSOCIATION

The Chair: I call the Ontario Public School Boards' Association, president Lynn Peterson, Camille Quenneville, senior policy analyst, and other guests. Welcome. We regret the delay this afternoon, but we had a vote in the House, and all members have to have the opportunity to vote.

The procedure I believe you're familiar with, because you have been before us on a number of occasions. You have half an hour; whatever time remains from your presentation, we will divide equally between the three parties. I look forward to your presentation. Please proceed.

Mrs Lynn Peterson: Thank you for allowing us to be here today. The other person with me today is Mike Benson. He's the executive director of the Ontario Public School Boards' Association.

We'd like to talk to you about what we believe should be a priority in this province, and that's the young people of this province. The primary functions of the public school system are teaching and developing within young people the knowledge, skills and attitudes that lead to a successful transition to adulthood. However, there is no longer any doubt of the correlation between family characteristics and school success or between the occurrence of social, emotional and behavioural problems and academic achievements.

Needy children, poorly housed children, malnourished children, children with ineffective parenting, children of single parents, mentally, physically and sexually abused children are more likely to perform poorly in school than other children and are at higher risk of dropping out. This pattern can become cyclical.

Those who do not complete high school are at a greater risk for unsuccessful transition to adulthood than those who do complete high school. School dropouts are more likely to remain or become poor and more likely to experience chronic unemployment. In addition, the rate of incarceration among dropouts is significantly higher than among those who continue their education. Mr Robert Thompson, president of the Ontario Contract Custody Observation and Detention Association of Thunder Bay, has stated: "Canada has the highest rate of youth incarceration in the industrialized world. Young offenders must be seen as children at risk; 90% of these children in custody have been victims of abuse by a trusted figure."

Across Ontario, school boards are becoming increasingly concerned about vulnerable children and are assessing the scope of the problem and seeking new policy and program directions to meet the needs of children and adolescents with social, emotional and behavioral problems. Recent cutbacks to the education system will exacerbate this problem.

School cannot and should not ignore the needs of vulnerable children. By default, schools have assumed an ever-expanding responsibility to respond to the needs of all children. Needy children cannot be ignored. However, the capacity of the school system to provide the services that would be helpful to children at risk for social, emotional and behavioural problems is sorely limited. We have neither the formal mandate nor the resources. The dilemma is that if the needs of vulnerable children are not met, they are less likely to learn. If they do not learn well, the consequences for the individual and society can be severe.

We acknowledge that it is not only the education system that is competing for its share of insufficient resources. However, in an all-too-familiar story, as other sectors find their budgets curtailed or face the need to reallocate resources, it is often preventive or early intervention services that are cut. Schools end up providing services because everyone has eliminated them from their budget.

The recent report of the Working Group on Education Finance Reform stated that 360 million tax dollars — that's local property tax dollars — are being spent funding health and social supports for schools. At the same time, we are faced with a public response that appears to say that education costs are rising too rapidly.

While it has been suggested that drastic cuts to school board budgets can be absorbed by cutting a bloated administration, the education finance working group report that came out last week stated that administration costs make up only 5% of the school boards' budgets. The most recent data of the Education Relations Commission state clearly that there have already been significant cuts in administration. Compared to 1993, in 1995 enrolment has increased by 2.19%; supervisory officers have been cut by 12.25% and consultants by 23.13%. These figures do not include the net result of the social contract or any further cuts that are pending. Most school boards have conducted massive restructuring of their central board offices, and while trustees have always tried to focus school board resources on the classroom, it is obvious from these figures that serious cutbacks will continue to affect the classroom.

As of now, the effects in the classroom are becoming more and more apparent. We have recently surveyed our member boards to see what the provincial government reductions in the area of social and health supports to the classroom have been. They include the fact that staff levels have been reduced, with no increase despite growth in student population. In Halton, the board will be reducing its psychologist and psychometrist staff by 25%. The Leeds and Grenville board has reduced its staff by one psychologist, resulting in less service.

There have been either reduced or cancelled services where boards are depending on social service agencies to make up the difference. In Huron, the board of education has made an innovative agreement with the local children's aid society to share services of social workers. The Nipissing board will not be replacing their social worker. Many boards don't have social workers to begin with, specifically the small rural and northern boards; they have never existed in those schools, and if they're cancelled in

other parts of the community, they have an even greater problem.

The cancellation of junior kindergarten has found its way into more than 20 boards of education across the province. That's about 25% of public boards in this province.

There has been elimination of teaching assistants and support services, and that means less one-on-one intervention. In Niagara South, the board has reduced its staff by seven education assistants, and the Nipissing board has cut back four education assistants. There will be less support for students and teachers. There are fewer teaching assistants, which has removed many one-to-one care situations that previously existed. In Leeds and Grenville they are having serious difficulties meeting the needs of their exceptional students. I would think you would find that in many boards across the province.

There are waiting lists for some services, and some services just don't exist in some places. There has been a revision of program delivery to accommodate these changes. The North York Board of Education has reduced the size and the site locations for summer school. In Lincoln, they have reduced the number of speech-language therapists and audiologists, leading to an increased waiting time for assessment.

There is less money for supplies, activities, equipment and building renovations for special-needs students. In Oxford, they have had to eliminate all building modifications that are required for their exceptional students.

There is reduced expertise and reduced quality of service and program. In Middlesex, they have reduced all of their ESL/FSL teaching positions, which has resulted in a reduced level of expertise.

There is less integration and there are more students with severe emotional and behavioural problems in regular classrooms. In Oxford, that board has reduced its teaching assistants by six as part of an overall staff reduction, resulting in less support available to meet the needs of exceptional students.

There has been increased class size for specialized programs. In Waterloo they'll have to increase their class size for these programs due to the loss of one teacher in itinerant special education and 0.5 in developmental education.

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Many boards across this province are looking at new and different ways of attempting to provide special education to their students. They've modified programs and they're going to attempt to put in new types of services. In all cases, it has reduced service. We're going to try and see what we can do in places like Lakehead to provide a different way of providing those services.

In terms of children's mental health, OPSBA believes that the more recent studies documenting the size and scope of mental health problems among Ontario's children and their relationship to poor school performance make the redesign of the delivery of children's services an urgent priority.

Dr Freda Martin of the Ontario Association of Children's Mental Health Centres, who appeared before this committee a couple of years ago, stated:

"The broader context for children's mental health must always be recognized: Poverty and inadequate living

conditions, abuse, and inadequate parenting and stimulation in the family do not necessarily directly cause mental health problems, but these are all part of the perpetuation of cycles of abuse and disadvantage."

Section 27 is a regulation under the Education Act that governs the province's transfer payments to boards and provides for the operation by local school boards of schools in hospitals, women's shelters, homes for unwed mothers and similar agencies and institutions. The local board is then reimbursed for the cost of these programs by the province because many of the students are involuntary non-residents of the board providing the service.

As this funding is cut, boards lose the ability to serve these students in these facilities. These students, many of whom suffer from mental health disorders, lose the safety net that education provides. Recently, the Simcoe County Board of Education lost six treatment programs and 48 student placements due to cutbacks in section 27 program funding. I've tried to find out what happened to these young people. I don't know, and I certainly hope someone here could tell me.

The call for more attention to the area of children's mental health is not new. OPSBA concurs with many experts in the field who recognize the dilemma that children's mental health services are not a priority for any ministry, and they haven't been.

I worked in a psychiatric hospital 20 years ago. Children's mental health was not a priority for anyone then, and when I went back to that same hospital in 1988, I did not see that anything had changed. The children of this province are not being served in terms of mental health.

Because of this, it has often been overlooked. There are as many as 7,000 children currently on waiting lists, and while that figure fluctuates slightly year to year, it is extraordinary and it is shameful. If it were a physical health epidemic, the province would be forced to act immediately. We renew our call on this government to coordinate the work of the ministries of health, community and social services, and education and training to address this most serious issue, and it is a serious issue.

We recommend that the government coordinate the work of the ministries of health, community and social services, and education and training, and address the serious issue of children's mental health.

In terms of junior kindergarten, the importance of the early years in children's subsequent education achievement and overall development is well documented. OPSBA recognizes that high-quality early childhood education can be beneficial to young children, especially for those from disadvantaged backgrounds.

The Royal Commission on Learning states:

"Excellent early childhood education enhances their understanding of the value and centrality of formal learning; it expands teachers' expectations of children's capacities and parents' expectations of teachers' one-on-one involvement with their children. Recent research shows that children, both those who are privileged and those who are disadvantaged, benefit from high-quality early schooling of this kind."

Bill 34 has made junior kindergarten a permissive program. The Ontario Public School Boards' Association

urges this government to proceed as quickly as possible with its review of alternative staffing. As early education programs have been proven essential preparation for students entering primary education, school boards must be able to explore alternative methods of delivering and staffing in order to maintain this valuable program. Many school boards have reluctantly had to cancel junior kindergarten because of the changes in funding. This is especially difficult in northern Ontario, where very few, if any, other early childhood education programs exist.

Once again, we ask this government to proceed as quickly as possible with its previously announced review of alternative staffing and to complete its review of junior kindergarten and make public its findings. In addition, OPSBA requests that the government work with its education partners and school boards to determine the best method of providing this service.

This is a proud moment: Success by Six. The Ontario Public School Boards' Association recognizes the role it must play in working with other partners on behalf of children. We are therefore delighted to announce our new partnership with the United Way of Greater Toronto in developing the Success by Six program.

This program began in Minneapolis six years ago with tremendous support from the Honeywell Corp and Dr James Renier, former president and CEO of Honeywell. The first Success by Six program was a community initiative in early childhood development that is part of a larger United Way program called Community Works. Since its inception in Minneapolis, there are approximately 100 locations across the United States and two in Canada where the Success by Six program has been adapted by local communities.

Community Works brings together innovative partnerships with business, education, government, labour and non-profit organizations. This program is a long-term preventive strategy which includes funded programs, advocacy, community partnerships, grass-roots participation and public awareness campaigns.

Therefore, we recommend that the provincial government strive to coordinate children's services more effectively and that it continue to work with its partners in ensuring the most effective system possible for the children of our province.

While we recognize the need for the province to deal with the provincial deficit, we urge careful consideration of the impact of policy decisions on our young people. Study after study indicates that preventive programs are cost-effective and an investment in a prosperous and productive society. All stakeholders must be given careful consideration of program changes to ensure that the needs of students are met. The government must ensure that the many, many barriers to effective coordination of services and program delivery are removed.

We look forward to our continued partnership and working with this government.

Mr Martin: Thank you for your presentation and for coming today and for your continued interest in public education in Ontario. I don't think there's anybody around the table who doesn't recognize the very valuable contribution of your organization, as it represents every community in Ontario in a very democratic way, in its

structure and in the way it gathers information and ultimately in the way it passes that information on.

I don't disagree with any of your recommendations. I think they're appropriate, and if we were to get at them and get some of them done, we would find ways to make better use of the resources we have.

I know you've been struggling for quite a while now, even when we were in government, with diminishing resources. We took probably about \$1 billion out of your funding, which you dealt with and worked with and found ways to work around. Certainly what you're getting now by way of reduction is another challenge to you.

It seems, though, that there are folks out there who think there is a simpler, more direct answer to all the problems we face. They point to our system as being less than perfect. I don't think anybody would disagree that the system needs improving — as life changes, as the challenges change, as the world changes, there are things we could be doing differently — but to suggest for a minute that our system is not one of the best in the world, I would argue with. I would like some comment from you on that.

I would also like some comment from you on the suggestion that maybe charter schools will be the panacea that will solve all the difficulties we face at the moment. 1730

Mrs Peterson: Thank you for that. No, I'm not going to challenge you about whether public education in Ontario is the finest. It is, but it also can improve. Everything changes. There is nothing that sits still. Imagine a world without change. I can't. The fact of the matter is, we can move forward.

I'm not sure that charter schools are the answer to anything. Community involvement in schools? Absolutely. Is it happening? Certainly, in different ways in different communities, in response to community needs.

For me to answer you as clearly as possible, I'll talk to you about my own board, the Lakehead board. My board has had a school improvements program in place for about six years now. It is a focus on the learner and is very much driven by the parents in the parent group that runs the schools. Quite frankly, policy memorandum 122 was a step back for our school improvement teams in terms of what they have the ability within the schools to do. Our school improvement program is based on high expectation and standards for our children and community involvement. There is a way to do this in every community.

Charter schools are an ideology. There are certainly some places that say it works, and I suspect in New Zealand it may work to some degree. Our latest discussion with folks from New Zealand, and this was within the last week, was that they work in about 50% of the schools. You have to remember that these are elected bodies in every school; they are paid; they have support staff. There's also the issue of some schools charging quite heavy user fees to go to those charter schools.

Public education in Ontario is a system open to every child. It's universal access. Whether or not we could have charter schools the way they were described earlier — when I listened to them, they sounded more like the

alternative schools that already exist across this province. I don't think there's a school out there that wouldn't do better with more parent involvement.

Mrs Helen Johns (Huron): First of all, I want to talk about the children's mental health issue. I think your point was that never have we had enough funding in children's mental health and we need to move forward. From the standpoint of this government and the Ministry of Health, which owns and operates many of the psych facilities and liaises with seven or 10 children's facilities, the funding we have cut strictly has been 2% this year, 3% next, all of that having to come out of administration and all being reinvested back into children's mental health services in Ontario.

I think we've done at least a little bit to help out the situation in children's mental health in Ontario. As much as I recognize that your problem was a funding issue from forever in government, I think there have been some changes that will help in children's mental health, as small as they may be, but I think that's important.

Being a member from Huron county, I'd like to thank you for the little spin there for the Huron County Board of Education, but Huron county has substantially different funding from many of the other boards in the province. As a result, I believe they're a forerunner in shared services and working with other groups.

As you know, in the public board we spend approximately \$5,500 per student and in Toronto they spend up to \$9,000 per student on education. I believe that what we have here is what you'd call an excellent example of boards liaising and partnering with social service groups, but in effect that only happens in areas where they've been forced to, like my board, which is incorrectly funded as a result of years and years of inadequacies and government's failure to put a price for education on each student that's fair and equitable. Do you want to comment on that?

Mrs Peterson: I'd like to comment on both your points. I appreciate anything this government or any government has done in terms of making the plight of children with mental health problems a little easier. The fact is that it's never been a priority for any government.

One of the things we need very much to do is to get health, education and community and social services working in a more integrated manner. I believe there are places where there's duplication of services, and that could be eliminated. There are also many places where the children are still falling through the cracks. I think the only way that can be done is carefully, in terms of assessing what programs are actually being delivered by whom and taking a look at it very carefully, filling in the gaps and removing the duplication. I think we can provide services to our children far better and I think we would, if our children were a priority. We all talk about kids coming first. There are days when I wonder if any of us truly mean it. I find it really regretful.

In terms of sharing and cooperative services, I think you will find that the majority of boards in this province have done superb work around cooperation. Most of it in the past, I agree with you, has been strictly out of the need to survive. Northern boards have cooperated forever because they've had to share resources. I use curriculum

councils east and west as an issue. They only get about \$500 a board for curriculum development, which is something that could or should be done provincially, but that doesn't give anybody enough money to develop anything. So what they have done for decades is pool their dollars. That's a cooperative service in terms of driving curriculum that meets local needs, reflects the local community and is cost-effective.

On your comment about boards that spend more or less, I know there's been a hue and cry about some of the larger boards spending more dollars. I also have to ask the reverse side of the question: Is it because small boards like Huron or Lakehead or Shining Tree or Caramat don't have access to the supports that the larger communities have? We don't have psychologists, psychometrists, social workers. They do not exist. The Lakehead board is a very large board for northern Ontario. It serves 52% of the land mass — the largest board in north-western Ontario. When the funding wasn't quite so tight, we actually had a line item, for three budgets in a row, for two psychologists and a speech pathologist, because we needed them. We never hired them because they won't come north.

So there's a flip side to all the assumptions in terms of who spends what. We have to be very careful when we look at the spending per child. First, what are the situations these boards find themselves in? I walked into the Toronto board several years ago; I believe my board has some issues, but I found a board that was writing curriculum in over 50 languages because it was necessary. That costs money.

Mr Gravelle: Thank you very much for coming. Before I ask you a question, I want to congratulate you, Lynn, on your election as president of the association. I think they're lucky to have you. Lynn and I are both from Thunder Bay, so it's great to see you.

Mrs Peterson: Thank you.

Mr Gravelle: When this standing order began, when we began the process back in December — and of course it is about the impact of cuts to children's services — this was before the \$400 million in cuts that went through to school boards. We felt already that there was a high level of concern and reason to bring this issue forward. Some of the issues you're bringing forward today simply add to the level of concern.

It's important, especially because we don't have a lot of time left today even to ask many questions, to bring it down to an understanding of what it means for smaller boards and humanize it. For example, I learned today about the Fort Frances board. My understanding is that in terms of their social supports, they are literally all gone. I want to know if one of you can confirm that and explain to the committee — and you are our last presenter too, so I think it's important — what that means. Is it true that in terms of the Fort Frances board, their social supports, psychologists — there are none? This is what I heard. If so, what impact does this have? I must admit, in terms of your presentation, it strikes me that the impact will be quite profound.

Mrs Peterson: Yes, you're right about the Fort Frances board. And it goes deeper than that: They have no teacher-librarians left; their one and only French

consultant is gone; their one and only vice-principal is gone; and worse, considering the topic we're covering today, their guidance counsellors are gone. I find that really difficult.

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We can identify the children out there who need help and yet we are taking away services. This is pre-social contract. That \$400 million annualizes into \$800 million. It is difficult. Lakehead board right now is going to be contracting out for those services. We're on a waiting list with the local hospitals. All of you I'm sure are aware that places like Marathon didn't even have doctors. I don't know what they're doing for services for their children.

Mental health services, social services are not something that's a priority, and it's difficult for every board as they cut back. People say, "You've got so many people outside the classroom." Those are support to these children. These children are our future.

I heard a question earlier about leaving these children with a debt. There's a balance here. My generation didn't handle things very well, but handing that problem over and making my grandchildren, who are in the system now — four of them; three more at home — I'm not willing to allow my grandchildren to pay for that. There has got to be a balance. We have to handle this very carefully. Getting the deficit under control is doing things right. We also have to do the right things.

Mr Gravelle: What is so alarming too is that in some ways it's very difficult to truly assess the costs. If you look at it strictly in terms of dollars, decisions had to be made, but in terms of the costs down the line, they could be very profound and we really don't know what they are, especially when there was a system in place that was more sensitive and was dealing with them and that one could probably prove was improving the world in a really positive way in terms of children.

That's what I find most upsetting about those particular losses, that you can't necessarily assess them. Certainly one of the things I try to do in my role is to get the government to recognize that a lot of the decisions it makes have an impact that we can't necessarily assess. I know they are good people over there and caring people in a lot of regards and I don't think they necessarily understand what the impacts are. That certainly concerns me a great deal.

Mrs Peterson: There's a long-standing, pretty well-taken document about how for every \$1 you spend now on these children, you get \$6 or \$7 back. You pay it now or later. The cost to society and to these children is certainly not something that we can willingly or knowingly make them pay as adults.

Mr Gravelle: Hopefully, you can get the message across.

The Chair: Thank you for your presentation this afternoon. Our time is up. I'd like to thank you for coming with your staff. I would also like to wish you well in your new responsibilities. I know our paths will cross from time to time. All the very best.

Committee members, we have 15 minutes to provide some direction to our researcher. In subcommittee we agreed that we would approach it by having each party

take five minutes to share their views on what they believe should take place. Therefore, I would ask the government side if you'd like to proceed.

Mrs Janet Ecker (Durham West): This is my first time through in terms of one of these reports for the committee, so you'll forgive my caution in terms of what we're supposed or not supposed to be doing here.

The one concern I had when I went over the report — and there's certainly been a lot of hard work done on this by Ted, and he's had an awful lot of material to have to wade through to pick and choose some information to put in here — is that we were going to go back to the ministries, I believe, and ask for some new, updated information, because I think there are some issues about the context and the facts about what may have happened subsequent to some of the testimony that we really need to see in here before we can make a decision about whether our party will be able to support this particular report or not. That would be the main issue here. I think that was pretty well it.

Mr Ted Glenn: The information is on its way. It's supposed to be delivered to me by this Friday. We should have it by then.

Mrs Ecker: I think there have been some interesting figures quoted in it that go back to the 1980s in terms of some of the reductions and changes, which I think are appropriate to provide a context here. Some of the information from the ministries that will be provided should be helpful.

Mr Gravelle: Certainly I'm very grateful for what our research officer, Mr Glenn, has been able to pull together in terms of a pretty fair representation of what all the presenters have put forward and what they've recommended. In terms of the report itself, I would share with Mrs Ecker the concern that we have all the facts and all the accurate information to put together a report that is fair. But I think the evidence is clear, in light of what's been presented and in light of the facts that are at hand, that there is no question that this particular standing order we've engaged in has been a very positive thing in terms of recognizing some of the difficulties, what the impacts of the cuts are on children.

I hope we would have an opportunity to have a draft report brought forward with recommendations that we could probably deal with as a subcommittee at some point down the line. It's important, from my point of view and our party's point of view, to indicate why we brought this particular standing order forward. It was done in November, after the 21.6% reduction to social assistance benefits had been announced and was in effect. I think the strongest impact that clearly had was on children. There were 500,000 children who were part of the welfare rolls and who were affected by this. Obviously, there were various other cuts that were being made to agencies that affected children — reductions to children's aid societies, reductions to children with disabilities.

I'm personally very involved with the special services at home program, and although I recognize that in base terms one could probably argue that the funding wasn't actually reduced, in real terms it was reduced probably by 25% because of the budget being absolutely flat-lined in a rather cruel way while there are more clients.

There are all kinds of examples of agencies involved with working with children on various bases; 100 agencies have been downsized or have terminated special programs for children, and another 430 are under review in 1996. We know that food bank usage has gone up 54% in one year.

I think there is little question that the value of this particular committee's work is clear in terms of outlining what it is. The difficulty will probably be in coming to agreement as to what the recommendations of this particular committee should be. I recognize that the government members might have some difficulty in putting forward recommendations that are critical of themselves, but I also hope that they would be open to the possibility that they might be willing to look again at some of the areas where the cuts took place. That would obviously be my hope.

But in terms of how the report itself should be put forward, to me it's very clear and it makes sense that what we've been provided by Mr Glenn is really helpful. There will obviously be the material that Mrs Ecker mentioned — and that's fair game, and it should be done soon — and that a further draft report be put forward and then perhaps brought before the subcommittee which we could then work on and bring before the full committee at the first opportunity.

Mr Martin: I'm not unhappy with what we have before us now as a draft of the report. I believe it will also eventually include a listing of the cuts the various ministries have made that affect children's services.

Mrs Johns: Or reinvestments.

Mr Martin: Whatever you want to call it.

Mr Glenn: There will be an updated list of funding decisions. Currently, the information that was provided to us is included in that document from last December. That information will be updated.

Mrs Johns: The cuts the NDP made also.

Mr Martin: That's fine, so that we know what the cumulative impact is. I would also be very interested in having, if it's possible, any document that would give us a context within which you're doing what you're doing, like any impact studies that you've done — you call them a business plan — that outline how all of this will eventually help everybody down the road somewhere. It would be really helpful if that was available, if there's anything of that sort existing, any context, any impact study that the government has done.

I guess the question would be: What is the basis upon which these decisions are being made? Is it purely financial? Is there any interest at all re the impact this is having on people, on families and children? Does the government have that and would it be willing to table it as part of this report? That's all.

The Chair: Thank you. We actually have eight minutes left because the three parties have not used up all their time. Mrs Ecker, you have more time actually.

Mrs Ecker: Just one observation: When I went through the report the first time — and this may be something that comes when you go through some of the other submissions — my recollection is that a number of the groups quite acknowledged the need for spending

reduction. They may disagree with the way they think the government is doing it, but there certainly has been an acknowledgement for spending reduction, and I think also an acknowledgement in many areas for the need to restructure and do things differently and that kind of thing. That might be a point we try to elaborate on, because that is something that is very important as well.

The Chair: Any other comments? We can save some time. Is there any other business, by the way?

Mr Gravelle: Is there any way of setting a schedule?

The Chair: We were talking about it earlier. We have to wait to get that sorted out. We'll have to do that in the subcommittee.

Let me just say thank you for 99% of the civility that took place here in the committee.

Interjection: It's always civil.

The Chair: That's what I'm saying; I'm saying 99% of the time.

Mrs Ecker: We know whom he's referring to, but we won't put that name on the record.

The Chair: I thank you for your cooperation on that and I look forward to helping to work through what I hope will be unanimous agreement on a report. Thank you very much, and I hope everyone will have an interesting and exciting summertime.

The committee adjourned at 1752.

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STANDING COMMITTEE ON SOCIAL DEVELOPMENT

Chair / Président: Patten, Richard (Ottawa Centre / -Centre L)

Vice-Chair / Vice-Président: Gerretsen, John (Kingston and The Islands / Kingston et Les Îles L)

*Ecker, Janet (Durham West / -Ouest PC)

Gerretsen, John (Kingston and The Islands / Kingston et Les Îles L)

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*Pettit, Trevor (Hamilton Mountain PC)

*Preston, Peter L. (Brant-Haldimand PC)

*Smith, Bruce (Middlesex PC)

Wildman, Bud (Algoma ND)

**In attendance / présents*

Substitutions present / Membres remplaçants présents:

Fox, Gary (Prince Edward-Lennox-South Hastings PC) for Mr Jordan

Martin, Tony (Sault Ste Marie ND) for Mr Wildman

Sergio, Mario (Yorkview L) for Mr Gerretsen

Clerk / Greffière: Lynn Mellor

Staff / Personnel: Ted Glenn, research officer, Legislative Research Service

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First Session, 36th Parliament

Assemblée législative de l'Ontario

Première session, 36^e législature

Official Report of Debates (Hansard)

Tuesday 6 August 1996



Journal des débats (Hansard)

Mardi 6 août 1996

**Standing committee on
social development**

**Comité permanent des
affaires sociales**

Environmental Assessment
and Consultation
Improvement Act, 1996

Loi de 1996 améliorant le processus
d'évaluation environnementale
et de consultation publique

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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON
SOCIAL DEVELOPMENT

Tuesday 6 August 1996

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DES
AFFAIRES SOCIALES

Mardi 6 août 1996

The committee met at 1000 in the Best Western Wheels Inn, Chatham.

ENVIRONMENTAL ASSESSMENT
AND CONSULTATION
IMPROVEMENT ACT, 1996LOI DE 1996 AMÉLIORANT LE PROCESSUS
D'ÉVALUATION ENVIRONNEMENTALE
ET DE CONSULTATION PUBLIQUE

Consideration of Bill 76, An Act to improve environmental protection, increase accountability and enshrine public consultation in the Environmental Assessment Act / Projet de loi 76, Loi visant à améliorer la protection de l'environnement, à accroître l'obligation de rendre des comptes et à intégrer la consultation publique à la Loi sur les évaluations environnementales.

The Chair (Mr Richard Patten): Ladies and gentlemen, we want to get started. It's good to be here in Chatham, in spite of the environmental alert, I might add, which seems somehow appropriate. We have some witnesses before us this morning. Welcome to the witnesses. Thank you for taking the time to consider the issue before us, which is a review of, and your testimony on Bill 76, An Act to improve environmental protection, increase accountability and enshrine public consultation in the Environmental Assessment Act.

TURKSTRA GARROD HODGSON

The Chair: We are prepared to hear our first witness, Turkstra Garrod Hodgson. You have up to one half-hour in which to make your presentation. Any time you leave is then available for questions from the three party representatives and chances for responses on those.

Mr Herman Turkstra: Thank you very much, Mr Chairman and members of the committee. I've given Ms Mellor copies of my remarks. I assume they've been distributed to the members. I'd like to read significant portions of it, but I will leave some of it because of the pressure of time, and I'd like to have an opportunity to answer questions.

I'd like to give you some of my personal background, not so much to necessarily brag about it but simply to let you know whom you're dealing with and what kind of experience I've had.

I've been involved in environmental assessments for over 30 years. For the first 20 of those years we called them OMB hearings, but many of the real issues were the same and many of the problems were the same.

During the last 10 years I have had a great deal of experience working on projects under the Environmental Assessment Act. I have represented citizens' groups

opposing projects — I think Ms Ross will know at least one of those — and I've fought on a number of occasions to preserve natural environmental features on issues.

I've conducted environmental assessments for private industry, including the St Lawrence Cement proposal to replace coal in the kiln with fuel derived from municipal garbage, and for approval of a major landfill which was just recently approved by the present Ontario government.

I have been hired by the Environmental Assessment Board itself to assist board members in dealing with long and complex hearings and with intervenor funding; for example, the OWMC hearings and the Ontario Hydro supply and demand hearings.

Other members of my firm have worked on a similar scope. My colleague Doug Hodgson was the person who raised the argument with regard to salt mine disposal because he was raised in Essex just down the road and knew about salt mines, and you'll recall that was the reason the board gave for refusing that proposal.

Our firm in Guelph represents municipalities and the county of Wellington and the city of Guelph, so I think I have some idea of what this is all about.

You may be interested to know, those members who are not from the city of Hamilton, that I have some understanding of the political realities of the situation because I served as an elected member of Hamilton's board of control, I belonged to all the appropriate, as I said, green, black, red and blue environmental associations and professional bodies, and I taught a little law. So when the conversation gets around to how you make wise decisions in the province of Ontario, I have a little bit of experience and I might be able to give you a little bit of help.

I'd like to talk to you about what, after all that experience, I consider an environmental assessment to be and to tell you about the time that Constantin Doxiadis, a famous Greek planner, was in Hamilton. I arranged a private lunch for him and other local affected officials. I asked him what the difference was between working on both sides of the Iron Curtain. He said that in the dictatorships, when he was hired, he sent in two or three of his people to get instructions from the boss; then after the project was completed, he sent in 100 people to deal with the sabotage and destruction of the project. In a democracy, when he was retained, he sent in 100 people to find out what was sound and would work, and then after the project was approved, he would leave two people behind to implement it.

That summarizes environmental assessment, because it's essentially a process to find out what will work and to find that out before starting construction and to minimize outrage.

Our current form of environmental assessment has its roots in the ability of computers to produce graphic analyses of large bodies of data. The first environmental assessment I saw was in the 1960s. It consisted of a computer program which plotted a route for a state highway in 10 different ways: one way to protect wetlands, another to protect historic sites, another to cut construction costs and another for safe driving. After the computer had plotted all 10 different alternatives based on 10 different criteria, some bright technician thought it might be interesting to see what would happen if we printed the 10 results on transparencies and laid them one on top of the other. The result was spectacular, because the best route stood out graphically.

The same thinking went into the Ontario Hydro route selection process, and there grew a belief you could find a single best route. We have spent a fortune in this province in trying to achieve that impossible goal.

After Hydro corridors and highways, the act was then applied to landfills, which meant that it replaced the former system where the county engineer would go for a drive with the warden, they would eliminate the sites that were close to the farms of politically connected residents, test the result on engineering principles and choose the cheapest. The problem was that a lot of those landfills leaked and caused problems. So landfills became the fad whipping target of the 1970s and 1980s, just as sewage treatment plants had become the whipping target of the 1950s and 1960s, because they too originally leaked and smelled.

When engineering caught up with the problems of the sewage treatment plants, the public's attention moved on to landfills, and now that the engineers have caught up with the problems of landfills, the public's attention will shortly move on to something else. I encourage you not to look at this legislation in the light of landfills. Taken in the long view of life, they have had their day. What we need for landfills and sewage treatment plants are published clear standards of environmental protection, and their siting can be left to the normal land use planning process.

Environmental assessments are complex planning processes and there are three fundamental problems they address: Is the proposed project needed? Are there smarter alternative ways to get the result you need? How can we ensure that the project, when built, will not cause serious long-term harm to people or the natural environment?

This latter issue is clearly the most important because we have learned that our children will pay in spades in the future for the serious environmental mistakes we make today.

It is going to take a lot of money and a lot of time to clean up Hamilton harbour.

Once the swamp is killed, the butterflies are gone, the orchards next to the swamp are no longer pollinated and the crops are cut in half, we will find it very hard to go back and recreate the swamp.

In that context, I'd like to give you some guidelines from my own experience which I hope may give you some assistance as you are considering this bill:

(1) Environmental assessment should be distinguished from environmental impact assessment. Impact assess-

ment is critical. That's what the Environmental Protection Act is all about and its strength should not be diminished and its role not forgotten. Looking at alternatives should not take focus away from carefully studying environmental impact. Resources to study impact should not be diverted to an overly complex study of alternatives.

(2) Environmental assessment in Ontario has become an art form. It has made millions of dollars for lawyers, including our firm, and for consultants because of the lack of clarity in the existing section 5 of the Environmental Assessment Act. That is wrong and must be corrected. The Ontario EA process has developed its own language and culture. The general public and the business community do not understand it and are not comfortable with it. The existing section 5 is a gift to the legal community, consultants and hearing officers. Half my time on a major environmental assessment is spent trying to work through the various arcane interpretations of what that section calls for.

(3) There is a desperate need for early binding decisions, and I would like to put that in the context of public consultation.

I believe passionately that the best decisions are made by sharing decision-making power with the people who will have to live with the results. The more power you share with the local community, the better decision you will achieve and the less outrage will accrue. You are engaged in such an outrage control mechanism today. By talking to me and others before you make your decision, you reduce the chance we will send outraged letters to the editor about the new bill. But more importantly, by consulting with people who live on the EA block, you may learn something from our grass-roots knowledge.

Exactly the same principles apply to a decision-making process for major projects that have potential for significant public and environmental impact.

I advise my clients to think of all of this as if they were dealing with a neighbour over the issue of where to locate your air conditioner.

In that context, human nature dictates we will only get off our couch at the last minute, so the public leaves the issue alone until 11:59. You have to create a process that requires involvement of municipalities and neighbours early and comprehensively. That can work under the new bill if the approved terms of reference are in fact approved and binding. Neighbours will start to take the process seriously at the beginning rather than waiting until the last minute and popping out of the woodwork. Binding interim decisions would also be helpful.

If you would like some of the experience we had in a recent landfill environmental assessment, I would be happy to answer questions. On this topic I speak not just for myself, but that's exactly what the seven community members who worked for three years on that environmental assessment had to say about the process.

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(4) The time has come to combine the Environmental Assessment Board and the Ontario Municipal Board.

The question of "where" in virtually every contested EA, called in EA jargon the siting issue, is generally nothing more than a land use issue, and it is not a sophisticated environmental issue. It is the same issue that

is faced by persons wishing to locate co-op housing, group homes, hazardous chemical plants, racetracks, rock concerts or shopping malls. The present gap between the EA act and the Planning Act, between zoning issues and EA issues, is dangerous and costly and must be closed.

There is no need to have a specialized board dealing with environmental assessments. In the last year, I have spent months in front of a panel of the municipal board dealing with the most sensitive environmental issues for 750 acres of parkway belt land and will go back in October to work in front of a joint board with members from both the EAB and the OMB dealing with changes in the Niagara Escarpment plan. It would be no big deal to combine the two boards. In fact, it is dangerous to have a specialized board with some members who are recruited because they are experts. Instead of judging the evidence at the hearing, the expert board members have been known to decide for themselves before the hearing starts, on the basis of their own experience, making the hearing process almost irrelevant.

(5) Hearings are a bad way to attempt to resolve the social issues that are always raised in an EA process. The last thing anyone in the world needs is to have two or three people come from Toronto to set the values for Chatham.

Having said that, I have to put forward a contradictory position. We have to accept that in a perverse but effective way, access to hearings has a healthy effect. As long as a public hearing is possible, there is always a threat that your expert will be cross-examined under oath in public. Because of the hearing threat, we all take real precautions to ensure that our experts are right from the beginning. But most of us who have experience with these long hearings are fed up with them and would like to see them at least minimized. Strong, effective mediation built into the system will help, but the emphasis is on "strong." Generally that means using your most senior and experienced board members, who can talk with the voice of authority to the wrangling parties.

We have to recognize that the social issues debated in the EA process are, in the final analysis, political issues. Whether you put a landfill in an urban area or a rural area is largely a social and a political issue. This is why the appeal process ends in the cabinet. It also means that when the real dispute at the end of an EA is the social and political issues, a hearing is generally a waste of time.

(6) There is a fine line between taking the time needed to have a sound public exploration of a major project and a process that is so long it starts to harm the community. Timetables are absolutely essential, and the government reviewers and approving agencies must stick to the timetables as well as the proponent.

You have to give your agencies the staff and the budgets to perform on time, or the public and the business community will be harmed by delay. There is lots of very solid, hard evidence that these lengthy, complex processes cause real harm to communities. I want to say to you that the EA process hurts people as it's presently performed.

(7) We have a serious need to get the provincial government approval process out in the open. The way to

guarantee poor decisions is to have the decision made behind closed doors. Every major decision along the way should be issued by government approval agencies in the first instance as a proposed ruling. I cannot tell you enough how destructive it is to have decisions made by government agencies at all levels where the opponents or the proponents do not have a real chance to see what the agency is proposing to decide before the decision is made. People who live next to a project know their own communities. Businesses who work in the field know something about the realities of their activities.

Staff reports and analyses at the provincial level should be as accessible as staff reports and analyses at the municipal level. It will reduce the number of mistakes and the number of times that we stumble into long, protracted disputes and hearings, and this would produce better decisions.

(8) There is a huge and fundamental difference between environmental assessments carried out by government agencies on the one hand and a private company on the other. It is totally inconsistent with the entire mode of operation of the business world to have a public debate on the need for a private project. Private enterprise responds to the market. There is nothing more destructive than a debate between a local opposing activist and a business manager on whether or not the need for the proposal exists, whether the need should be a public need or a private need. There is no point at which the thinking processes get anywhere on the same plane.

In the case of government projects, however, such a public analysis is desperately needed. The Ontario Hydro, OWMC and Pearson expansion reviews are good examples of the need for someone to take an outside look at the need for such projects. That was one of the sound reasons for introducing the Environmental Assessment Act in the first place, confining its operation through regulation to government activities, and leaving the private sector to be regulated by the Environmental Protection Act and zoning bylaws under the Planning Act.

The Environmental Assessment Act cannot work on the long term in regard to private sector proposals unless the realities of the decision-making process of the business world are built into the legislation. I say that with a clear understanding of the concerns that the current privatization movement might present an opportunity for governments to circumvent the EA act by carrying out government projects through private sector operators, and I'm happy to answer questions about that.

(9) There is a very serious need to ensure that the wording of the legislation does not encourage conflict over minor issues. The word "significant" does not presently appear in the legislation. Its absence has meant that when I go to oppose a proposal, I will draw up a list of dozens of ways to kill the project because I know that the process as presently constituted does not encourage a distinction between significant environmental impacts and minor. So those of us in the opposition business tally up every little aspect we can find, knowing that in the table of compliance versus non-compliance, weighting of significance is not always encouraged.

In the context of those principles, the first version of the bill made a number of significant improvements:

I strongly support the need to have process decisions made in a binding fashion early in the process.

Secondly, it would be wrong to set a universally binding process, because there is a big difference between a project in Chatham and one in Scarborough.

Thirdly, it is sound to have the legislation finally deal with class environmental assessments in an explicit fashion.

Fourthly, it is sound to get rid of that silly distinction between acceptance and approval stages. I've been working in this field for years and I really don't understand why it was there in the first place.

Next, the right of the minister to direct the Environmental Assessment Board on scoping issues by sending specific issues to be heard by the board is sound, and I might even consider strengthening it. I want to say that the underlying disputes between the ministry staff and the board have done nothing but create uncertainty, cost, delay and troubles.

The rest of my comments refer to specific terms of the bill's text. They are, if you like, a little bit more mechanical, and I'll supply those to the committee during the next week. But if you want to just have a start on looking at this issue of the wording, you might take a look at section 6 and ask yourself over the lunch break what you understand by the word "rationale" in that section. As the hearings go on, you might ask other people what they think that word means and see if you get any consistent development as to what it really means.

I fervently hope that before you finish, each member of this committee will take the time to look at one environmental assessment — I mean the whole environmental assessment; I mean the 100 or 200 boxes over the five years, over the \$7 million to \$10 million to \$15 million to \$20 million that the current process has involved in it — and give yourself a feeling for the way in which this has moved away from a simple objective of trying to ensure that good alternatives are looked at and that the environmental impacts are very carefully looked at as well.

Thank you for the opportunity to be here.

The Chair: We'll begin with the government side. We have 12 minutes left; that's four minutes for each caucus.

Mr Doug Galt (Northumberland): Thanks for the presentation. It's very enlightening and certainly very interesting, very thoughtful. You've obviously put a lot of effort into this.

You made reference to, and we have in the bill, public consultation. Do you see that it should be defined any further than what we have already, or do you feel comfortable with the enshrinement of public consultation at this point in time?

Mr Turkstra: I'm very comfortable with the idea of enshrining public consultation in the bill. I have some serious concerns about the actual wording. I think it would be a profound mistake to attempt to prescribe the form of public consultation. That is my specialty; that's what I do for a living. It is wrong to think that the Legislature or the EA branch can define what will work in a different community. It has to grow. I'll give you, in

my notes on the specific wording, my comments on the text in that section that deals with public participation, but on principle I agree that it must be mandated.

Mr R. Gary Stewart (Peterborough): You made the comment on your last page that we might consider strengthening some of the specific issues that should be sent to the board. Can you elaborate a little bit on those you might suggest?

Mr Turkstra: Yes, sir. There is a conflict between the way in which the Environmental Assessment Board approaches some of the issues under the act and the way in which the ministry staff approach those issues. While that conflict is not very overt, it exists. Someone has to make a decision as to who's going to be the boss on that issue, and the fact of the matter is that there's an appeal to cabinet. It seems appropriate that the minister take the political responsibility, given the final cabinet appeal, to say, "This is what's going to the board and what the board will decide." There is some text in the current form of the bill that I'm not exactly sure will accomplish everything the bill was intended to accomplish, but I think it's sound that the minister take the political responsibility for saying, "These are the issues that are left at the end of the two years and this is what the board will decide," and that's what the board has to decide.

1020

I want to tell you that comes from the fact that even where the board in the past has been given narrow Environmental Protection Act hearings, the board has turned them into what amounts to an Environmental Assessment Act hearing. In other words, they've gone beyond the limit of it, so somebody has to set the rules and you've got to referee that fight.

Mr Stewart: Do you think that curtails any of the suggestions that the public may want to do or curtails any public involvement by that?

Mr Turkstra: Sir, uncertainty breeds psychosocial adverse impacts. If you don't know what the rules are, people get unnecessarily upset. They don't understand the dimensions of the problem. If you leave it to the board to define the terms of the hearing, you end up with people saying, "We have some magical result at the end in the form of the Environmental Assessment Board, and they can straighten all of these things out for us," and it doesn't happen and they get disillusioned and they go home unhappy and miserable.

Mr Dalton McGuinty (Ottawa South): Thank you, Mr Turkstra, for taking the time to share some of your expertise and insight with us.

There are a couple of things I wanted to raise with you, one with respect to your comment that it's dangerous to have a specialized board, where some members are recruited because they are experts. I want you to comment further on that and on what practically it would mean if we were to combine or merge the EA board and the Ontario Municipal Board, and also if you might comment on the fact that this bill will not provide for participant funding.

Mr Turkstra: I have to try to do that in one minute, right?

Mr McGuinty: Yes.

Mr Turkstra: Good. I was the person who argued in the Court of Appeal that I couldn't get a fair hearing in the Red Hill Creek hearing unless I had participant funding, so in some circles I'm considered as the grandfather of intervenor funding. The Court of Appeal in that case said the Legislature should do something, and the Legislature went and passed the intervenor funding act and all the lawyers think I'm wonderful, and that's great.

On a voluntary basis, I believe exquisitely that a proponent is wise to fund participant funding. I have some doubts about where and when under the intervenor funding act, specifically since I advised the board, I was counsel to the board on the Ontario Hydro supply and demand, and we watched one day when we finally added up all the figures and, in my recollection, I think it came to something like \$25 million or so. It just got out of hand.

It's one thing to fund participants who are involved and are stakeholders and it's another thing to encourage a whole industry to develop in response to intervenor funding, which is what it did. So I think you ought to give a try at the terms of reference encouraging participant funding and see how that works. Because intervenor funding just got out of control.

Mr McGuinty, I'm sorry, I missed your first question.

Mr McGuinty: Your proposal that we merge or combine the EAB and the OMB.

Mr Turkstra: People have the idea that a hearing is some kind of investigative process, and it isn't; a hearing is a place where people go to fight. One person will come in and say, "I believe that the hydrogeology will fail on this site," and another person will say, "No, I believe the hydrogeology is fine, because it's clay," and this person will say, "No, I took a truck out there and I dug some holes in the clay and in fact it's cracking," and the other person will say, "That was an anomaly but the rest of the site is fine." So you get people who have to listen to the evidence and what you need are good judicial skills. You don't need a lot of hydrogeological skills, because if you hire a hydrogeologist and put that hydrogeologist on the board, that person will see the whole evidence through their own particular view rather than balancing the two cases.

Today I practise in front of a combined Environmental Assessment Board and Ontario Municipal Board. You can ask Mrs Ross, but if you had to compare the public impact and concern arising from a project called the Spider, which was a 500,000-population automobile racetrack which was going to be assessed by the Ontario Municipal Board under the Planning Act, and the Steetley landfill, which was to be assessed by the Environmental Assessment Board under the Environmental Assessment Act, you have to ask yourself why those two things end up in two areas, because the impacts are really profoundly much the same from both of them. As I say to you, I spent seven months in front of the Ontario Municipal Board last year in a highly contested hearing and all we did was deal with environmental issues — the existence of the natural species on the side of the valleys and how the construction of houses would impact on those species — all heard by the Ontario Municipal Board.

The third reason is, essentially where you put something is a land use issue, not an environmental issue,

because there really is no difference between a rock concert and a waste transfer station. People get upset about them; they worry about the environmental impact on them; they worry about the way in which it affects their property values; they worry about the way in which it changes the character of the neighbourhood. What you need are good, sound decision-makers. Their jurisdictions overlap. You're constantly dealing with environmental issues in front of the OMB and you're dealing with land use issues in front of the Environmental Assessment Board. I tell you, as a lawyer who practises in front of both of them and has worked with both of them for years and years, there really is no useful purpose in having the two boards.

Ms Marilyn Churley (Riverdale): Thank you for your presentation today. Your long years of experience are, I'm sure, quite helpful to the government while they contemplate any necessary changes to the bill.

You mentioned section 6 a couple of times, I believe, and asked that we should look closely at the word "rationale" in there and ask other people what they think it means. I wonder if you could spend a few minutes telling us what you think it means and why you've picked that in particular to focus on.

Mr Turkstra: First of all, can I tell you, Ms Churley, that my job is to try to explain this legislation to groups of citizens, whether they're my clients because we represent them as an opposing group or because they're a group of stakeholders who are involved in, and my belief is that you turn the decision over to the stakeholders and let them make it.

I have to explain that legislation. I've never been able to explain that word. I have no idea what the hell it means; honestly, I don't. I've heard it expressed as why, I've heard it expressed as the need. One of the board members in an early decision said the word "rationale" imports into the legislation a requirement to define the need for the project, because you'll see that the word "need" is nowhere in there. Then, if you go past that word, you need "a statement of the rationale for...the alternative methods of carrying out the undertaking, and the alternatives to the undertaking." What does that mean? I honestly don't know.

I had some time last night, because I got here a little early, and I asked myself, "If one of the committee members said to me, 'Could you fix that section?' I'd say, 'Yes, I think you can.'" As a matter of fact — I hate to burden you with my handwriting — I have what I think it means.

Ms Churley: Aha, finally, after all these years.

Mr Turkstra: No, what I think the legislation means.

Ms Churley: Yes, thank you. I wonder, do I have another minute here? I have another question for you.

Mr Turkstra: Yes, can I deal with your other question?

Ms Churley: But that is something that you would like a further look at, obviously.

In terms of public consultation, and I'm interested to hear you say that you believe the stakeholders need to understand what's happening and participate, the upfront consultation that this legislation proposes includes the public, but the public is not at this point defined. I

wonder, because of your work with the stakeholders, how you would advise the government to make sure that public consultation is meaningful and how the government should determine who the public is in this case to begin the upfront consultations with.

Mr Turkstra: I will give you a note on that to flesh out what I'm about to say, but let me tell you that I don't know what the words "as may be interested" mean.

Ms Churley: Exactly, yes.

Mr Turkstra: I have no idea what that means. I think there will be lawsuits over that wording coming out of your ears. I think it's a mistake. I think that wording is a mistake, but I don't think you should take away from it. I don't think you should arbitrarily define what the public is, but what you should do is make sure that public participation is mandated. I will provide you with some texts that may be of some assistance in that.

The Chair: Mr Turkstra, thank you very kindly for your presentation. It was very thoughtful and provocative.

Mr Turkstra: Good luck, sir.

1030

FEDERATION OF ONTARIO NATURALISTS

The Chair: We will entertain our next witness, who will be from the Federation of Ontario Naturalists. Welcome to our hearings. Any time that you have remaining from your presentation will be devoted to questions from the three parties.

Ms Neida Gonzalez: My name is Neida Gonzalez. I am representing the Federation of Ontario Naturalists this morning. Good morning. I'm a land use planner by trade, and this presentation is the collective work of the board of the Federation of Ontario Naturalists as well as various staff members.

The Federation of Ontario Naturalists is a conservation group that has been around in Ontario for over 60 years. During that time we've worked diligently to protect natural heritage in Ontario, as well as wildlife and environmental issues.

We've worked with the environmental assessment process since its beginning in the 1970s and we have experience with various processes and hearings, including the class timber EA as well as provincial highways and sewage and various other issues. On that note, we feel we have some experience in this area and some thoughts we'd like to share with you about Bill 76 and some of the changes that are going to be implemented.

Overall, we realize that EA needs amendment, that the process needs to be more effective and efficient. Our concern is that while we do that we keep in mind the purpose of the Environmental Assessment Act, which is the environment, and make sure that the process will still do what it's intended to do, which is to protect the environment.

There are five areas in particular we would like to look at. Those would be the terms of reference, the exemption process, class environmental assessments, harmonization and public consultation.

Starting with the terms of reference, we believe they could be a very good tool to streamline the process. We have few concerns the way they're laid out at the moment. Overall in this presentation two things that I

would like to stress are that the fundamental requirements of the EA process, which are now under section 5(3) of the current act, need to be upheld, and that public consultation also needs to be enshrined in this act, which is the intent of Bill 76 to begin with.

Therefore, we're very concerned that in the terms of reference there's not a public consultation process laid out. It will be the first stage of the EA process once the terms of reference are enshrined in this legislation, and we feel that the public needs to be involved at this early stage.

Secondly, we are very concerned that the minister will have the ability to dispense with environmental assessment requirements that now stand in section 5(3). In the latest presentation here, by Herman Turkstra, he indicated that we should look at the word "rationale." I've outlined here in this presentation what, as an environmental group, we think the basics of section 5(3) are and what needs to be upheld, and those are: to describe the purpose of the undertaking; to identify alternative methods of carrying out the undertaking; to identify alternatives to the undertaking; and, of course, to describe and evaluate the biophysical, socioeconomic and cultural impacts of the undertaking.

Impact assessment and looking at alternative methods and alternatives to the undertaking are two components that go hand in hand in EA right now. We feel that needs to remain.

Jumping to class EAs, we've also noticed that the terms of reference in that area indicate that the minister would have the ability to dispense with EA requirements.

We recommend that this power that the minister will have if Bill 76 stands needs to be amended so that the 5(3) requirements are enshrined in EAA and that those cannot be dispensed under any circumstances. Also, there needs to be a public consultation process in regard to the terms of reference.

Our second area of concern is the exemption process. There haven't been very many changes in Bill 76 to the exemption process from what already exists in EAA, but over the years it has been a controversial issue and we feel that it hasn't been addressed adequately in this bill. There still are no clear criteria or exemption procedures in the bill and we feel that certain projects are being exempted at the moment which should not be exempted and we feel that this issue needs to be clarified and that by including clear criteria and exemption procedures in the act this would be alleviated.

In respect to the exemption process, we've noticed that the recommendations made by the Environmental Assessment Advisory Committee in its report to the minister, number 47, were not really taken into account. Overall, we feel that this committee, given the opportunity, should go back and look at that report. We feel that it was a very well-thought-out report and that the recommendations should be reconsidered and incorporated into this bill wherever possible.

With respect to class environmental assessments, we're afraid that class EAs are going to apply to major projects that are of a unique nature. Clearly, class EAs are intended to apply to minor projects that are similar in nature and have predictable and mitigable impacts. This

clearly isn't described in Bill 76. I think that needs to be tightened up in that section and minor projects need to be defined as the goal of the class EA process. Also, as I mentioned before, the terms-of-reference procedure for class EAs is set up in a way that the minister can bypass EA requirements.

Our recommendation, in this case again, is to incorporate EAAC's recommendations on class EAs and, as a minimum, to include criteria that limit class EA undertakings to minor projects and to require that basic EA components be addressed in the terms of reference.

Harmonization is an issue that hasn't been addressed over the years. It really needs to be addressed in this bill, which this bill does do. We fully support harmonization of Ontario's EA process with other jurisdictions, including the federal process. However, we feel that Ontario's standards cannot be compromised by joint assessments. To facilitate joint assessments by creating a situation where we are lowering our standards is not acceptable. We feel it has to be made very clear under all circumstances that Ontario's EA system will not be compromised in joint assessments. We don't feel that Bill 76 reflects this at the moment.

Our recommendation is to ensure that basic requirements of EA now in section 5(3) be addressed in joint assessments and that section 3.1 in Bill 76 provide the public with the opportunity to comment on proposed joint assessments.

Overall, we'd like to make some comments on public consultation. We appreciate that the intent of the bill is to increase accountability and enshrine public consultation in the Environmental Assessment Act. However, there are a few instances where the bill has not achieved this goal. Terms of reference are going to play a critical role in EA, and this is the point in time where the public needs to be involved. If you have terms of reference that lay out the direction of EA and the public then is involved, they will not have had any input as to what direction the EA process is going to be taking. I feel this will cause conflict with the public and not make the EA process a smoother process.

Also, there are other areas where the public needs to be considered. This is with the exemption process. I think notice at least has to be given to the public when projects and proponents are going to be exempted. Referrals to board hearings and scoping of hearings are also a place where the public needs to be involved. A balance needs to be reached between public access to the system and the discretionary powers being given to the minister.

Our recommendation on public consultation is that we need to amend Bill 76 to provide meaningful public consultation throughout the EA process.

1040

In conclusion, I would like to talk about what is being omitted from Bill 76. It's already been brought up that there's much overlap between the environmental assessment process and the land use planning process. This issue has been brought up before, that there needs to be integration between these two process. This bill fails to deal with that issue. I don't believe the solution is to amalgamate the two boards. That would be starting at the top of the issue when you really need to work it through

the whole process at ground level and see where the overlap is with municipalities and with the EA process. And there needs to be real integration. The problem is not going to go away by amalgamating the two boards; there's going to be continual conflict there.

Another issue that is not being addressed is applying EA to private sector projects. This is an increased concern now with privatization efforts, where the private sector is going to be taking over areas that are typically the responsibility of the public sector, whether it be provisions for sewage or garbage disposal, landfills, incineration, whatever areas we might be taking privatization into. I think this changes the scope of EA. EA was meant to deal with those projects, not necessarily just with public proponents. If the proponents are no longer the public, we have to really look where EA is going to go as far as private projects are concerned.

Also, we're very concerned that issues such as compliance and monitoring have not really been dealt with. We're concerned that we go through the entire EA process, and then the recommendations, terms and conditions are not being followed and we don't have a recourse to make sure that happens. If we want to use our money efficiently, if we're going to go to the trouble of having these processes, we need to make sure it's implemented. I'm not sure that's happening right now.

In conclusion, the failure of Bill 76 to uphold the fundamental EA requirements and the public's right to participate in each step of the EA process are our major concerns. We feel that this government has a real opportunity to improve this piece of legislation and we encourage the committee to read our recommendations and those of other groups and make changes accordingly, if possible. It really would be to the benefit of the natural environment and our resources to have them adequately protected and used. That is the conclusion of my presentation.

The Chair: Thank you. We rotate between the parties for questions. This round we'll begin with the Liberal Party. We have a little over five minutes for each caucus.

Mr McGuinty: Thank you for your presentation. I wonder if you could explain to me, in as practical a set of terms as possible so I can better understand, what it would mean to the public to have access in — is it in lending shape to the terms of reference or being consulted about the terms of reference before they're finalized, and that the public doesn't haven't that access until somebody says, "Here are the terms of reference; this is what we're going to be dealing with?"

Ms Gonzalez: The way it's currently addressed in legislation is, "When preparing an environmental assessment, a proponent should consult about the undertaking with such persons as may be interested." That may be a little too vague, but obviously there's a scope of people who are the public of interest for various EA processes and then there's the larger public. How you find a balance between the two — I'm not sure I have the right wording for you right now. We're a little worried that the current wording might be too limited. But our major concern is that public access to the terms-of-reference process isn't addressed at all at the moment. How that happens is an issue for discussion, but to start off with,

we'd like to see it in there, and it's not in there right now. That's our basic problem, that the public really doesn't have a role.

Mr McGuinty: If I felt that I should have been involved in lending shape to the terms of reference and I was not contacted — maybe this is something the parliamentary assistant could answer — do I have a right of appeal? Do I have any kind of remedy? How would that work?

The Chair: Is the question to the witness or to the parliamentary assistant?

Mr McGuinty: The parliamentary assistant.

The Chair: We suggest you take that under advisement and address your question to the witness, because we're limited.

Mr McGuinty: I'm not sure they have the answer to that.

Ms Gonzalez: There's not a recourse, as far as we can see at the moment. We're worried that the direction of the EA process is going to be decided before the public has even had a chance to become involved in the EA process.

Mr McGuinty: The exemption process is always a controversial one. I wonder if you could tell us what the general rule would be. What guidelines would you want to lay down? When should a government exempt an undertaking from the environmental assessment process?

Ms Gonzalez: What should be exempted?

Mr McGuinty: Yes, when should they, what factors ought they to be considering, or should everything be subject to a hearing?

Ms Gonzalez: We're not saying everything has to be subject to a hearing, but without some criteria based on environmental values and issues, we're in a position where things are being exempted and we're not given any reason. There's no requirement even for us to have a written response about why something is being exempted. It's done behind closed doors, and at the moment it can be an arbitrary process. We're not saying that every time an exemption is passed, it is arbitrary, but there's no balance in the system now to make sure that exemptions are being passed based on solid environmental reasons that address why this undertaking isn't going to have an effect on the environment and therefore merits an exemption. There's nothing there now to stipulate that has to happen.

We've seen exemptions in the past where we've questioned them. We have questioned, and continue to, exemptions to the parks act. We're going through looking at management plans for parks, and there are questions in our minds why this would not come under environmental assessment, considering that it's not just an administrative process we're dealing with. There are numerous examples. There's nothing in the legislation now that stipulates why an exemption should be given, under what circumstances, what the regulations may be. That needs to be made clear to really reassure the public that exemptions are happening for the right reasons.

The Chair: Let's now move to the NDP.

Ms Churley: Thank you for your presentation. To start with a simple question following up on the Liberal caucus question, would you say that this process we're

discussing here, the exemptions and the minister's discretion, is politicizing the process too much?

Ms Gonzalez: We feel there isn't a balance, so the answer to your question is yes. It lends itself to be a political process, which is hard to get away from when we're dealing with politics. There need to be things in the legislation that take it back to a less arbitrary decision. It's not to say that every decision, as I said before, is ill-founded, but there is nothing to guarantee that that can't happen.

1050

Ms Churley: I think what you're saying is that as much clarity as possible, which of course in EAs is very difficult to get to in some cases, but as many upfront rules as possible and as much clarity and transparency as possible so that the public and the proponents understand what the guidelines are, that it's all transparent is important. You're saying this bill does not provide that in some of these cases.

Ms Gonzalez: In respect to exemptions, it does not provide it. To be fair, it does not provide it in the current legislation. I think it's an issue that hasn't been addressed as fully as it can be.

Ms Churley: Intervenor funding: As you know, the Intervenor Funding Project Act has run out and the government has not renewed it. There's nothing in its place. I'm wondering what your opinion is as to what effect that may have on communities trying to participate in hearings.

Ms Gonzalez: This is a difficult issue as all groups have seen their intervenor funding manipulated and used for reasons that it was not intended, but we've also seen groups that have really needed it, that have used it properly, effectively and efficiently for the purpose it was intended. It needs to be replaced. The problems that were occurring with it need to be addressed. We don't believe it's the solution just to get rid of it and not replace it with anything. We are very concerned that the groups that do need it don't have access to it and that this is going to limit the number of good community groups that have real issues from appearing at hearings and addressing real environmental concerns.

Mr Galt: Thanks very much. A very thoughtful presentation; I certainly enjoyed it. If I could just make a point of clarification as it relates to exemption requests, these go on to the Environmental Bill of Rights registry for a period of 30 days to solicit public comment prior to any decision being made upon those requests. This is carried out as a matter of course. It was under the previous act, although it was not in the act; nor is it in this particular bill.

Just before I turn to my colleagues, I'd like to quickly ask you about your thoughts on public consultation early in the terms-of-reference period. You alluded to it, but you really didn't give us any thoughts on how it maybe really should be in there.

Ms Gonzalez: I could provide you with specific wording, but our interest really is that where the terms of reference, which are in sections 6.2 and 6.3 — clearly it looks like the minister can have made the decision before the public has ever been involved because it really is a relationship between the proponent and the minister or

the ministry. They will deal with the terms of reference, which are needed, but I think there needs to be another element there where the public is brought into those negotiations at some point. I'm not sure it has to be a public representation, and the proponent and the ministry negotiating, but certainly that draft terms of reference go out to concerned members of the public needs to be put in as a separate clause.

Mr Galt: Certainly it's expected anyway.

Mr Trevor Pettit (Hamilton Mountain): Thank you very much for your presentation. I think Dr Galt has clarified your concern about the lack of public input because I think it is in section 3. My question for you relative to the terms of reference would be, do you agree that they are a good way to define scientific and technical issues up front?

Ms Gonzalez: We believe it's a good way to scope out the specific issues that need to be addressed. Our only concern is that the overall issues of EA be addressed at the same time.

Mr Pettit: Will the identification of those issues be a benefit to groups such as yours and other organizations that perhaps have limited resources?

Ms Gonzalez: Certainly. The EA process needs to be streamlined.

The Chair: Are there other questions on the government side? You still have a few minutes left.

Mr Stewart: I want to go to the class EAs. Your comment there suggests that class EAs should be clearly limited to minor projects. I guess when you use words like "minor" or "major," it's like minor variances: What's really minor? In my mind, if you're going to limit it to minor projects, does it not create controversy? What are you suggesting minor projects should be? If you're going to set standards, then why not look at projects, period, and forget about that word "minor"?

Ms Gonzalez: The intent of the class EA process we believe is to set up a standard process for projects that are similar in nature, that have similar issues, and group them under one EA process because the impacts are the same. Now, if you're looking at just individual projects with no definition of whether they fall into the category of projects that are of similar nature, that have predictable impacts, then you're really blurring the line between what falls under a class EA and what needs to be done under a full environmental assessment. Clearly, class EAs will only work if the intent of having the projects be of a similar nature remains. If it's going to be any project, then really the intent of the class EA process isn't being met.

Mr Stewart: My concern is the wording of it. I have no problems with what you're suggesting, that the projects be of similar nature — that's not a problem — whether it be a paint shop or a cleaning establishment, whatever it might be. Where I do have problems is where you're designating the word "minor," and it goes to a lot of these hearings that you have. It takes years and years to get them on before these boards because local municipalities or government, whatever, cannot — there are no criteria as to what is major or minor. I have difficulty with that.

Ms Gonzalez: What we're asking is for clarity and for definition because the last thing that we want to see is, whether you call it a major project, a project that does not fall under any of the criteria of any class EA being pigeonholed into a class EA process because you don't want to go through a full environmental assessment.

Ms Churley: I wanted to come back to the public consultation aspect. Speaking to the area where there is upfront public consultation, how do you feel the government should define who the public is? Are you satisfied with the definition here and what needs to be done to clarify that section?

Ms Gonzalez: We have concerns with the definition. We've consulted with various legal bodies and they haven't conclusively given us a definition that we're happy with either. We've already discussed this with various people in the ministry, and once we do have a definition we think is workable, we certainly will pass it on to you. But we are not satisfied with what is there right now. We feel it's a little too vague and loose and can be misinterpreted.

The Chair: Thank you very much, Ms Gonzalez, for taking the time to appear before us today. We appreciate your comments. If you have any subsequent thoughts, you can still submit those in writing to the committee by way of the clerk's office.

1100

KENT COUNTY SOCIAL JUSTICE COALITION

The Chair: We are ready for the next witnesses, from the women's committee of the Kent County Social Justice Coalition. Welcome. Thank you for joining us.

Ms Brenda Cowen: Good morning. My name is Brenda Cowen and I'm addressing this hearing of the standing committee on social development as a representative of the Kent County Social Justice Coalition. I was supposed to be having a copresenter this morning; however, she regrets that she can't attend.

By definition, the Kent County Social Justice Coalition is "a caring community committed to working together towards social justice and a healthy environment for all individuals in an equal society." We accomplish this through educating, organizing, mobilizing and, when necessary, protesting. We've had much opportunity to do that this past year. There are currently 29 such coalitions throughout the province of Ontario.

From the paperwork that I have been provided by the committee, it is my understanding that Bill 76, the Environmental Assessment and Consultation Improvement Act, is a proposed bill which is designed to (1) improve environmental protection, (2) increase accountability, and (3) enshrine public consultation in the Environmental Assessment Act. My intention is to review the proposal focusing on these three contentions.

A fundamental tenet of a society that values social justice is its willingness, through its laws, to be inclusive with regard to the opinions and concerns of all its citizens. All laws must therefore contain provisions which will ensure that decisions are made only after full public input has been sought and heard. Bill 76 is deficient in this regard in the following areas:

(1) In designing the new terms of reference, which is subsection 6(1) of Bill 76, there is no provision for public input in this crucial stage of the environmental assessment process.

(2) The duty-to-consult requirement by the proponent, which is section 6.1 of Bill 76, is not triggered during the critical early stages of the process, but rather during the documentation stage of the environmental assessment.

(3) There do not appear to be clear definitions as to what constitutes "meaningful public consultations," or in fact who "interested persons" are.

(4) Bill 76 fails to provide intervenor or participant funding, a necessary inclusion to ensure that participation rights are exercised.

It is therefore recommended that there be put in place appropriate public consultation in the terms of reference portion of the process. As well, it is recommended that intervenor funding be made available to members of the public. Nebulous definitions throughout the act of the kind mentioned in number (3) — for example, "interested persons" — need to be more clearly defined in the legislation to address accountability requirements.

Mediation: Section 8 of Bill 76 discusses the requirements with regard to mediation.

(1) It is the minister who decides which cases will be referred for mediation as well as who is notified with regard to his or her decision. This is subsection 8(3).

(2) The minister decides who the parties of the mediation are. That's subsection 8(4).

(3) The mediation proceedings are closed to the public unless the mediator decides otherwise. This is subsection 8(5).

(4) The minister is the only person who can make public the information contained in the mediator's written report. This is subsection 8(8).

(5) When disclosure is required, it is the minister who can disclose to the public the contents of the report.

It is my opinion that this section completely violates both the alleged commitments to public consultation and accountability. It is recommended, therefore, that this section be rewritten to include mediation sessions which are open to the public, as well as safeguards put in place to ensure that the minister is accountable for all information which surfaces in these sessions.

I would now like to discuss board hearings, which are subsections 9(3) to (5), 9(7), 9(8), sections 9.1, 11.3 and 27.1.

(1) The minister is able under these sections to deny reasonable hearing requests from the public.

(2) The minister also is allowed to restrict the scope of the EA hearing, if granted, by limiting the length of the hearing and by having the final say on what information can or cannot be heard by the EA board.

(3) The minister is further empowered to revoke or vary a decision made by the EA board without appropriate public consultation.

(4) This bill empowers the minister to issue policy guidelines that the EA board must consider, but does not ensure that there will be full public consultation on these documents.

It is therefore recommended that the minister be restricted from denying a hearing. It is further recom-

mended that policy guidelines be developed with full public participation. It is recommended that the minister not be empowered with the ability to revoke or vary a decision of the EA board. It should be mandatory that the EA board be comprised of individuals with no conflicts of interest, with a comprehensive understanding of the issues, and entirely independent of government and corporate influence. This is what currently exists. It is inconceivable to me why there needs to be such a change.

Harmonization, section 3.1:

(1) The minister can vary or dispense with any requirement under the EA act, as well as grant wholesale exemptions under the guise of "harmonization."

(2) Bill 76 fails to define "equivalency."

(3) Bill 76 fails to provide for adequate public notice when a harmonization order is enacted.

It is therefore recommended that there be put in place minimum equivalency criteria which will apply to harmonization orders which will clearly define what "equivalency" means. It is further recommended that any joint assessments be subject to public notice and scrutiny, including the Environmental Bill of Rights registry.

In conclusion, my review of the proposed Bill 76 leaves me with more questions than answers and creates in my mind the fear that the decision-making power that was moving towards a recognition that the public's rights with regard to input into the process be respected and guaranteed is now solely transferred to the minister or his or her designate. This being the case, how is accountability ensured? When a minister is empowered to unilaterally dispense with any requirement under the EA act when making a harmonization order without any public consultation or written justification for his decision, how does this ensure accountability?

Where are the provisions for full public input into each phase of the EA process? In this bill, the public are excluded from the crucial terms-of-reference process, as well as mediation sessions. Throughout this bill, there is no provision for the proponent to pay participant or intervenor funding. How does this "enshrine public consultation in the EA process"?

Lastly, how will this bill guarantee the environmental integrity of this province? When EA board decisions can be varied or revoked, when joint assessments have no requirements of adherence to the EA act, when the power lies firmly in one person's hands, how does this "improve environmental protection"?

My faith in this government having an agenda other than that of making this province business-friendly has been tested over this past year, and I no longer labour under the illusion that considerations such as democratic process, care and concern for the opinions of its citizens, and assuming a guardianship role to protect what is left of our environment are part of that agenda. I think this has been clearly demonstrated in Bill 76.

This concludes my presentation.

The Chair: Thank you. We begin the questioning with the member from the NDP.

Ms Churley: Thank you for your presentation. Have you personally ever been involved in any way as a citizen in an EA hearing?

Ms Cowen: No, I haven't.

Ms Churley: So you haven't been through any of the long processes. I believe that pretty well everybody agrees that some changes had to be made to the EA, to the process which is now in place, not necessarily these changes but that there had to be some changes. Would you agree with that?

1110

Ms Cowen: I think it would be necessary for you to be asking me what specific changes and then I could respond according to that.

Ms Churley: Sure. I guess what I'm getting at is that I have supported the concept of trying to scope and streamline. Our government started that process. Certainly everybody who's been involved with it for the past 20 years or so, everybody I know from all sides of the debate, feels that there had to be some changes made.

However, I tend to agree with you on the serious shortfalls within this legislation and particularly around the public consultation, because the title of the bill and the government's stated objective is that it should result in greater certainty and predictability. What it does is that ironically it's likely going to increase the uncertainty and the unpredictability, in my view, by overpoliticizing some of the decisions through these excessive ministerial and directive powers. I believe in some cases that will as well have a negative impact on the proponents. While we're trying to go to more clarity and certainty, this does not achieve the stated objective to scope it but at the same time ensure more public participation and more certainty.

My question is what would your advice be — I know it's a very complex piece of legislation overall — to this government to ensure that this kind of politicization of the process — that the public have more participation, as stated, and that there be more certainty in the process for the public and the proponent?

Ms Cowen: I think probably it would be initially necessary to be clarifying a lot of the definitions contained within this bill. I'm talking about specifically interested persons and what does "interested persons" mean. I think it's mandatory at every particular stage of the environmental assessment process that there be public input. How that is defined with regard to who the public is, who the interested persons are, as I had said, needs to be really clearly defined, but it is very necessary for us to be involved at those crucial stages, at the terms of reference stage. How that is actually done is going to be up to the decision-makers to be deciding, but I would like to suggest that rather than focusing on that not being a necessary consideration, that it is indeed a primary consideration.

Ms Churley: Do I have more time?

The Chair: Yes, you have more time.

Ms Churley: Coming back to intervenor funding, again I'd ask you, have you had any direct experience in that?

Ms Cowen: Not direct, no.

Ms Churley: Not direct, but I assume that within your social justice movement there have been people who have been directly involved in this process.

Ms Cowen: Exactly.

Ms Churley: Has anybody within that community had access, the benefit of intervenor funding, before?

Ms Cowen: Yes.

Ms Churley: Through an environmental assessment process.

Ms Cowen: That's right.

Ms Churley: I see. My concern, and I think you expressed it as well, is that the EA bill that was in existence is gone. How would you see community groups within your community raising money to participate in an EA hearing which, as you know, can be very complex and lengthy?

Ms Cowen: It can be very complex and very lengthy — you're right — and the longer that takes place the more funds are necessary. I think that any community particularly in 1996 in Ontario has an inadequate amount of money to begin with. With the number of layoffs, the possibility of rising municipal taxes, I think everyone in this province is scrambling. I shouldn't say everyone; a lot of people are scrambling. I think that the lack of intervenor funding or participant funding simply means there are going to be more people attempting to attain dollars that just may not exist. We can talk about holding yard sales or bingos or something like that to be able to raise the required funds, but I think this is an undue hardship placed on people when it is their right, as citizens of this province, to have access to hearings and assessments when we're dealing with the environment.

The Chair: On to the government side. We'll start the questioning with Mrs Fisher.

Mrs Barbara Fisher (Bruce): Thank you very much for your participation today. You share with us some views that maybe haven't been expressed before. I want to, if I could, focus on two words in your presentation, to "ensure accountability." I think that to keep it as non-partisan as we should in this forum, the two previous governments as well indicated there was a need for more public participation. But with regard to your question of accountability, I would ask if the average length of an Environmental Assessment Board hearing in the past of 32.3 months was reasonable, how that can be held accountable to anybody, and with that type of duration, where things perhaps could have been expressed in a more structured time frame but with open opportunity for everybody to participate.

Ms Cowen: I'm not sure that I'm clear about your question. I'm not sure how extending or placing a time frame on a process clearly discusses accountability. Can you clarify that more?

Mrs Fisher: I'm really asking you what you meant by "ensure accountability." To whom? To the public? To ratepayers? To government? To interest groups? What were you referring to when you said we should ensure accountability?

Ms Cowen: I think I had made it fairly clear what I meant with regard to accountability. What I'm talking about is that when decisions are made behind closed doors, when one person or his or her designate has the power to revoke or vary a board ruling, when mediation sessions are closed to the public, how does that ensure accountability?

I had asked the question, how is that done? If nobody has access to the information, how do we know what the

information is, and therefore how does that ensure ethical accountability?

Mrs Fisher: On a comparative basis in the past I can find maybe two instances where public consultation was permitted. I don't think this government is implying at all, in any case, that public consultation should not be permitted. Dr Galt, in response to a previous question, talked about the Environmental Bill of Rights disclosure of what would be included in the development of terms of reference: for example, the first stage of the new process. Included in there will be such things that talk about the description of the undertaking, the proposed study area, alternatives, public and agency consultations etc. So at every opportunity from the start of this process I think the public, being interest groups, agencies, municipalities, individuals, will have the right to access prior to a decision being made as to what even the terms of reference to be studied will include.

Ms Cowen: Then why is this not outlined in the bill? You're telling me now that all this is going to be done, that there is going to be compliance with full public consultation. My knowledge of this is contained in a written document and nowhere in that written document does it ensure the issues I have brought up with regard to public consultation. You can sit there and suggest to me that, "Oh yes, all of this is going to be done; this is going to be done; there is going to be public consultation," but where is it written down that this is actually going to happen? It isn't contained within the second draft of Bill 76; it is not there.

1120

Mrs Fisher: I won't disagree with that, but I do agree that in the past with regs, guidelines and with EBRs as well that has been the process. This is not unusual to the process as it has been in the past.

The other question I'd like to ask, again with regard to accountability: We know that from 1989 to 1995 the government spent, through intervenor funding processes, \$32.5 million to assist others to participate in the process, probably not a bad idea. My question is, however, what do you do with situations like when you know that \$25 million of that was spent on one process that was ministerially evaporated when somebody decided, for example, that the 25-year supply-and-demand studies by Ontario Hydro shouldn't go on and \$25 million had been spent? I ask you then, coming back to the question of accountability — I think we can look at that in broader terms than maybe what you've defined — how can we as a government account to the public for that type of handling of funds?

Ms Cowen: I don't think I need to be telling anyone in this room that waste and expenditure oftentimes go hand in hand. I can cite several examples, although I don't want to take up time, about waste by the Progressive Conservatives, waste by the Liberals, waste all over the place when it is associated with expenditure.

If I'm hearing your argument correctly, I'm hearing you say that because there was a \$25-million waste with regard to intervenor funding then, "For heaven's sake, we have to scrap the whole damned thing," so I'm suggesting that maybe we should scrap an awful lot of expenditure that is very wasteful expenditure. But I don't see that it

is any kind of appropriate argument to be addressing intervenor funding when it is so absolutely and vitally necessary for community groups or for individuals.

The Chair: Just two minutes for the government side.

Mrs Lillian Ross (Hamilton West): My question has been answered.

Mr Galt: Thanks very much for your presentation; interesting content.

I'd just like to point out that in the process we're putting forth there are five different points where there can be public input and involvement. You expressed some real concern up front with the consultation process, and certainly in developing the terms of reference it would be very wise and prudent on the part of the proponent to find out and lay it out with the public in developing that, and certainly once that's presented to the minister for focusing purposes and finalizing the terms of reference, it must go into the EBR registry for public input, so it is put before them very early at that point in time, just to try and help clarify.

The other one I was a little concerned about has to do with mediation. Mediation is a very informal process just by its nature, and once you take it into the public arena it becomes far more formal. It's meant as a process to bring two people or two groups together with a mediator to work out their differences, and if it's done in a public arena it makes it far more difficult. That was the thinking in there, and you may disagree, and I can hear that, but just to point it out.

What I'd like to come back to with you for just a couple of seconds is, how much better can we do, when the terms of reference are being developed, where you seem to be concerned with public consultation? How can we improve it in that particular area?

Ms Cowen: Again, this is information that has been presented to me only about — I think I heard it the first time, Dr Galt, when you had discussed that there will be public participation in those crucial, critical early stages of developing the terms of reference. That is not contained within the bill. If effective, early participation in the terms of references' development design is contained within the bill, that certainly would satisfy me with regard to that, but to simply have it between the minister and the proponent defining the terms of the entire process is not appropriate and not acceptable.

Mr Pat Hoy (Essex-Kent): Good morning. I want to pursue the terms of reference a little more with you. I know you've just answered the government side on public input, but you also talk about meaningful public consultation and interested persons and that those categories aren't as yet defined. If we are going to have input into terms of references and other questions in this bill, would you say that the public which is going to have input into this until certain terms and definitions are established could indeed be anyone or that the allowance should be anyone?

Ms Cowen: Or no one. I think that is probably my concern: Who are interested persons and who is making the decision who the interested persons are? If there happen to be interested persons and if it isn't clearly defined who these people actually are, there could be an

exclusion of people in this process. That's the only answer I have to that question.

Mr Hoy: I understand your answer.

Ms Cowen: Throughout this bill I've been concerned that there have been very ambiguous and vague definitions of numerous things: One is "equivalency" with regard to the harmonization portion; one is "interested persons"; one is "public consultations." There don't really seem to be very clearly defined definitions of these particular statements. They're the only ones I can think of right now, but as I was reading it through I was inundated by unclarity.

Mr Hoy: On page 3 you talk about the terms of reference portion and then you go on to say, "As well, it is recommended that intervenor funding be made available to members of the public." Are you asking for intervenor funding for persons who want to consult on the terms of reference, are you dividing that out and saying, "We need intervenor funding in the future for any aspect," or are you specifically asking for intervenor funding as you go into consultation with the government on all these matters that you brought up today?

Ms Cowen: I'm talking about intervenor and/or participant funding in every phase of the EA process from start to finish.

Mr McGuinty: Thank you for your presentation and for some very perceptive comments, I thought. Maybe just in passing, it's difficult to resist the temptation at times like this if you're in government — I'm going to speculate here — that somehow everything that's gone on before hasn't worked out and that there's a tremendous demand for improvement to be made in the legislation, and that's fair, but everything that has gone on in the past has not been a total failure.

I used to be our party's energy critic and I can tell you that if it had not been for the DSP and the requirements imposed upon the proponents, we could have ended up spending billions of dollars. I would say that was an important component in deciding not to go ahead with building new supply in the province.

The act is called an Act to improve environmental protection, increase accountability and enshrine public consultation in the Environmental Assessment Act. Who the heck could ever be against that? It just sounds so wonderful. The wordsmiths are earning their money today. But at the end of the day, as you point out, where's the beef?

My concern is that there is a lack of clarity with respect to ensuring things like public consultation and my concern as well is in part due to the record of this government vis-à-vis the environment to date. They have shown a proclivity towards finding that you have to make a choice between the environment and economic development in every case, and that choice doesn't have to be made. Modern thinking shows quite clearly that there's something called sustainable development and that economic development and protection of the environment can go hand in hand. But the government seems to believe that you've got to choose between one and the other and in every case you've got to opt for economic development.

I'm very concerned about the lack of clarity and I just want to thank you for your perceptiveness in pointing out that very problem.

The Chair: Ms Cowen, thank you kindly for presenting today and for taking the time with your group to consider this. We appreciate it.

1130

ONTARIO ASSOCIATION FOR IMPACT ASSESSMENT

The Chair: Our next witness is the Ontario Association for Impact Assessment, Mr Rowe. You've probably heard me provide the procedure here this morning. You have 30 minutes to use as you see fit. Whatever time remains from your presentation is allocated and divided up between the three parties. If you would state your name for the purpose of Hansard, and welcome to the hearings today.

Mr Steven Rowe: My name is Steven Rowe and I'm speaking to you today on behalf of the Ontario Association for Impact Assessment. We're an association of professionals who work in the impact assessment field in environmental and social impact. Many of our members have a great deal of experience in working in the environmental assessment area.

The Ontario chapter of the association has approximately 150 members. We're part of an international organization, the International Association for Impact Assessment, that has 2,000 members in 95 countries worldwide.

Members of our association have been thinking about the impending changes to the Environmental Assessment Act for some time. In anticipation of that we held a colloquium in May, 70 professional members attended and we produced proceedings from that colloquium which we forwarded to the government to provide some input because we knew that the government was very active at that time in thinking about changes to the act. Lo and behold, the act came out just a few days after we submitted our proceedings. We then proceeded to set up a subcommittee to examine the Bill 76 package, we prepared a submission under the Environmental Bill of Rights, and the presentation in the longer letter that's part of your package is essentially that letter.

The subcommittee has six members drawn from environmental professionals, the legal profession, people who have worked in both government and in the private sector for proponents and others. We brought together quite a broad range of experience of views but we pulled together what we felt was the closest thing we had to a consensus.

As to my own background, I'm a land use planner by background. I first became involved in environmental assessment 13 years ago when my firm Walker, Nott, Dragiceric, was asked to do an environmental assessment for a waste management for a landfill in Halton region. There was a lengthy process and a lengthy hearing, but that still is the only operating municipal landfill out there that was actually approved after a hearing under this legislation. So we have some experience of success.

Since then I've been involved in a number of other environmental assessment cases in waste management,

transit, I was involved in the Hydro DSP hearing, and Mr Turkstra mentioned Mr Hodgson just now, a solicitor at the OWMC hearing. I was the witness who worked with Mr Hodgson on that salt mine alternative for the disposal of the hazardous waste residues.

I've provided a brief summary of points. What we've tried to do for the purpose of the presentation is to concentrate on general principles rather than going into the details. But we'll see how the timing goes, and if I'm able to go into a few more details within a reasonable period I'll do so.

The first heading on the summary is "Improved Certainty for Participants." We certainly support that principle. We've found difficulties in that area in our own experience and we support the use of terms of reference and time lines and guidelines to achieve this.

We've heard a lot of discussion this morning about the status of the terms of reference in the act. Once the terms of reference are agreed upon there's no opportunity provided to maybe change the terms of reference further down the road in response to changing circumstances. This is going away from what was originally envisioned for the EA act as being an investigative process, that you start out with a very broad field and you gradually home in on what turns out to be an appropriate solution to a problem. I think to be able to do terms of reference like this you really need to have a pretty good idea of what the solution is before you start looking for it.

We recognize the need for scoping, though, and we have enough experience in a lot of kinds of projects like waste management to pretty well know where we're headed, but there should be some provision — and it's a very difficult area — for terms of reference to be changed where necessary. Very often, over a period of time, circumstances can change so that you might end up with terms of reference quite unsuited to the problem at hand by the time the project is actually finished.

The problem is that if you provide for changes during the process, that offers an opportunity for abuse, for people to come in and use that as an opportunity for delay, so whatever process is there has to be quite clear and quite brief. Another way of doing this would be to say that once you have your terms of reference, you have to act on it within a certain time so that we don't have somebody with five- or eight-year-old terms of reference attempting to get a project approved.

Another issue in the certainty area is the ability of the minister to revisit previous approval decisions. I think this is quite a retrograde step. If you think of a business or a municipality thinking of entering upon an environmental assessment process, they have a number of options in front of them. A municipality could go to a waste haulage company and just have the waste hauled away, or they could take things under their own control and do things within their own area. In making that decision, they're going to be thinking, "If we embark on this process that's going to cost us this much money, what's going to be the outcome?" If, even after having got a positive decision to approve a project, six months later a minister can come along and reverse that decision, that adds a great deal to the uncertainty and will deter people

from getting people involved in these kinds of projects in the first place.

In terms of accountability, what we see with this legislation — I mean, my own area of work has been this long history of precedents and policies and ways of doing things under the Environmental Assessment Act which comes out of board decisions and MOE policies and things like that. It's become very unwieldy and I agree that we have to clear the air and strip that away and start from the beginning again. But what's happened here is that all of that has been stripped away and all we're left with in the act is this very broad range of accountability.

I've asked questions about certain things that could happen under the act, and people have told me, "Well, that wouldn't actually happen." Perhaps we should restrict the act a little to what we actually intend it to mean rather than opening up to very wide scope. It might have been helpful if the bill had been presented in the context of a broad umbrella statement of what the government's overall intentions are. I think the way it's released has brought about a lot of suspicion in a lot of people's minds.

In terms of certainty and predictability, one government could interpret this act in one way and another government could interpret it in a very different way so proponents are going to have to be very wary of the political cycle as they work with this legislation.

We agree that there should be an ability to tailor environmental assessments to specific circumstances. There's a very wide range of conditions that come under environmental assessment, even within the terms of waste management. You could have an owner that owns dozens of sites across Ontario, so who does that person consult when they do their terms of reference? On the other hand, you might simply have a road connection between two points and it's fairly clear where the communities are that will be affected, no matter what route the road will take.

I think that's part of the problem in defining interested parties etc so closely within the legislation, that you have to deal with a very wide range of circumstances and it's very difficult to legislate somebody to deal creatively with those situations as they arise. I think that's part of the role of the ministry in making sure these things are done properly, and perhaps guidelines are the most appropriate way to do it. Guidelines have been given additional strength in this act through having to be considered, for example, by the board in making decisions.

We are concerned also about the number of decisions that can be made such as in harmonizations, variances in terms of reference, selection of parties for mediation where there is no need for consultation or reasons for decisions. We feel that should be couched more closely either in the legislation or in regulations.

Moving now to sustainability, we consider this to be a very important principle in ensuring that critical ecological systems are maintained for future generations. In the relatively recent Canadian Environmental Assessment Act, sustainability issues have been embodied to a certain extent in terms of cumulative effects and sustainability issues. We feel that these could have been incorporated

into the Ontario legislation. The purpose of the act is the wise management of the environment, but there's not much here which gives us the test that the end result is this wise management of the environment, and those overall sustainability issues are important.

1140

Moving on to hearings, I've been involved in some very long hearings. We agree that they should be made shorter and more focused, while also ensuring fairness and sound decision-making. I'd just like to make a quick note here that most environmental assessment hearings are not just under the Environmental Assessment Act. They're very long hearings, especially in waste management, that are also under the Environmental Protection Act, and processes as well are under the Environmental Protection Act, the Planning Act and other legislation.

The time lines that we've seen here are for the processing of an environmental assessment, but very often you have very voluminous Environmental Protection Act legislation that has to be reviewed as well. It's often that that holds up the approval process before a hearing, and the Environmental Protection Act material can lengthen a hearing quite considerably as well. There have been two-week cross-examinations on hydrogeology. So we're looking at a package of legislation. Improvements in the Environmental Assessment Act won't improve things unless things also improve in the EPA area.

There's been an initiative for waste management under the Environmental Protection Act to provide generic designs for landfills that would make it easier to approve them, but from my discussions, it appears that not many people would consider using those generic designs because of the cost involved. You're back to a site-specific approach which again is going to require a lot of time and resources for review.

The scoping of hearings is an important issue in deciding which issues are to be considered at a hearing. I find it's very difficult, because by doing a lot of this, you are sometimes putting aside issues that could turn out to be very important as the hearing progresses. When I was involved in the Ontario Waste Management Corp hearing, that is a hearing where perhaps that salt mine issue could very easily have been scoped out in the early stages because it had been dealt with to a certain extent and a lot of people weren't really pushing very hard for it. As it turned out through the hearing, there was some research that was being conducted by the corporation that didn't work out that made it much more difficult for them to bury their waste in the ground and the salt mine option became a much more doable approach, and that was partly why the evidence we gave in that area was so successful. As I say, it's a very difficult compromise in terms of, on the one hand, wanting certainty, and on the other hand somehow allowing for changes as they take place.

Some of our discussions were in relation to hearings that are on policies or strategic matters, not on specific sites. You could take as examples the Hydro DSP hearing and the Ministry of Natural Resources timber management hearing, both of them very long hearings. Here, you're attempting to establish policy. It's not necessarily an issue where there are people immediately affected by

a particular site. In those circumstances, we feel that both in the EA process and in the hearing, there can be some concessions made in terms of stringency and rules of evidence and things like that. They can make this an advisory hearing to the minister to make sure public views come in in making these decisions, and then, once the policy is place, the siting decisions can flow from that and perhaps have more local scrutiny.

In terms of monitoring, it's been mentioned before that monitoring a project construction operation, we feel, is very important. Very often a project gets approved, and unless there's monitoring provided, say, for landfill, it would be provided for under the Environmental Protection Act, which is the detailed legislation that deals with the nuts and bolts of the environmental approvals. But with other types of projects, such as roads, there's no legislation which allows you to follow up on the actual approval and make sure somebody goes out there and checks that all the predictions on which this proposal was based are followed through and actually come true, and where they don't come true, then perhaps that teaches us something for the next round or when the next proposal comes along. At the moment, we're flying blind to a certain extent in that we spend a lot of time predicting impacts but then don't spend very much time assessing what the impacts were once the project is in place.

That brings me to the end of my presentation. In summary, I'd just bring a couple of other points to your attention. One thing is that we agree with the time lines that have gone into the legislation but we're concerned with the resources that are going to be made available within government to review these documents.

Sometimes the various ministries have substantial commitments. I heard someone saying the other day that perhaps in a northern district of the Ministry of Natural Resources the whole staff might be called out for a month to supervise a fire operation. That might be an extreme example, but who's there to do the response under the Environmental Assessment Act within the allotted time period, and what happens when one of the public agencies doesn't follow through on the deadline? It seems there are no real provisions in place to make sure those deadlines are actually met or to accommodate circumstances where it's very difficult for an agency which is suffering from staff cuts and cuts in resources to allocate the required resources to do that.

We're also concerned about the issue of there being substantive public involvement only at the early stages. We support the statements that have been made by others that there should definitely be consultation in preparing the terms of reference. We can say that it's to the advantage of the proponent to consult and that it needn't necessarily be in the legislation, but that's what we were saying all along when consultation wasn't in the act at all. Now that it is in the act, when it says there's consultation on the latter part of the process but not the terms of reference, I would interpret that, not being a lawyer but from my planner's point of view, as a statement that yes, consultation is needed in this part but not in this part.

Since the terms of reference are the most fundamental part of the environmental assessment under the new act,

I think we should be providing for consultation in the actual legislation. I really can't think of any circumstances where you wouldn't need consultation, so why don't we just put it in the act?

You'll be hearing presentations from the Ontario Professional Planners Institute, of which I'm a member. I agree with the position they're taking with regard to harmonization of class environmental assessments and planning under the Planning Act. These are two processes that have been running separately, and it gives rise to a lot of duplication and confusion. They should be brought together. You'll hear more from OPPI about that.

In terms of proponent funding, I've worked on a number of projects where I've been a recipient of intervenor funding. I'm also, by the way, a member of the Canadian Environmental Defence Fund. I'm on the board of directors, and I'm on a committee that directs expert assistance, at cut rates, to community groups. It's important to harness whatever community resources we can to get involved in these cases, but to do it realistically, you really do need help in terms of the experts and the legal advice.

Very often, many of us would say it's advantageous for a proponent to do peer review during the actual process. I very wholeheartedly agree with that. As far as a proponent is concerned, and in their terminology, it's great for smoking out the opposition. As far as the opponents are concerned, it can often resolve concerns and it can often get a spirit of cooperation going. But I think we might need a little extra push to convince a lot of proponents to do that.

1150

I'm in general support of the principle of intervenor funding. I'm not sure when, if ever, it will come back again, but whatever we can do to bring whatever resources we can to bear in these processes and hearings I think is greatly to the good.

We've had a lot of involvement in considering the changes to environmental assessment over the past few months. We're ready to cooperate in any further refinements to the act, any future regulations and guidelines. We hope there will be consultation on the guidelines. We hear that there is, but again there's no provision for that in the act.

Thank you very much for the opportunity to be here, and I look forward to responding to your questions.

The Chair: We begin with the government side.

Mrs Ross: Thank you very much for an excellent presentation. I have a couple of questions for you. One is, when you talked about the terms of reference, you indicated that you felt there should be some sort of time frame applied to those terms of reference; ie, they shouldn't come out with terms of reference and be open-ended. They could last for 20 years or something without any changes being made. What sort of time frame would you recommend be looked at?

Mr Rowe: I think that would vary according to the kind of projects. You'd be looking at the kinds of variables that are involved. For example, with a landfill it might be waste quantities and the way that might vary. For a road it might be traffic rates. I think you would

have to look at a mix in terms of individual circumstances.

Most legislated processes that I've seen in the past, review of waste management master plans and also, under the Planning Act, reviews of official plans, were on a five-year interval. That would be a reasonable base. I think it should be five years or less in most circumstances.

Mrs Ross: I'm not an expert, nor do I pretend to be, on environmental issues, but you appear to have some expertise in that area. I just wonder how this proposed bill measures up to what some of the other provinces are doing across the country.

Mr Rowe: I have limited experience of what other provinces are doing. I'm aware that most of the provinces have hearings that are a little less formal than they are here in Ontario. As a planner I'd probably feel a lot better having gone through some pretty gruelling cross-examinations, but I'm much more familiar — I can't really speak with authority on processes in other provinces.

Mrs Ross: Okay. Thank you very much.

Mr Pettit: That was a very in-depth presentation and you have answered my one question. My second one would be that obviously there are going to have to be some regulations developed to support this bill. What type of consultations do you feel would be appropriate to develop those regulations?

Mr Rowe: It could be developed a little further in regulations, but probably guidelines. Guidelines tend to be a little more flexible. Given the range of circumstances that you can get with environmental assessments, as I said, you can be covering the whole province or just a narrow corridor, and with a huge range of possible solutions to problems.

A guideline can tell you that you should be going to the community groups who have an interest in this issue, to the business groups who have an interest in this issue. You should be going to people who could potentially be affected when perhaps a site is ultimately selected. That's very difficult when you're working at a province-wide level, although even then if in the terms of references you know pretty well where you're headed — for example, if you're disposing of high-level nuclear waste, you're looking for certain kinds of geological formations, so perhaps something like that could come out of the scoping or come through the scoping and then that can help you to focus your terms of reference as you go along.

I think what the guideline has to do is really raise a series of opportunities of what's appropriate in different kinds of circumstances.

The Chair: Sorry. Time is up. We must move now to the Liberal caucus.

Mr McGuinty: Thank you very much, Mr Rowe, for taking the time. I know that you drove here this morning from Toronto. I appreciate the effort you made.

I just wanted to get something straight. You have in the past acted for proponents for relatively large and complicated undertakings. In fact, is that what most of your connection with this is?

Mr Rowe: Did you say "proponents" or "opponents"?

Mr McGuinty: Proponents or opponents. Which is it?

Mr Rowe: I've worked for both.

Mr McGuinty: Having had that experience on both sides of the table, you feel that it is in the proponent's interest that there be some kind of participant funding?

Mr Rowe: In many circumstances it can be in the proponent's interest, yes. Very often you might be halfway through an environmental assessment process, and say you're looking at a range of possible landfill sites. You have a dairy farmer nearby who's completely dependent on a clean water supply to run his business and his farm and everything else and for the household's livelihood. That person might be really concerned about the hydrogeology issue — that would be an outstanding concern — and may not believe the experts who have been hired by the proponent. In those kinds of circumstances, if an arrangement can be made to have a peer review done, which needn't be all that expensive, from a separate person selected independently, then that can help to resolve a lot of concerns.

Mr McGuinty: I wonder if you might tell us a little bit about the fact that this bill attempts to impose some time lines, which I think is seen by many, including myself, as desirable, with respect to how long the ministry's going to take to deal with proposals that come before it. However, what about the EPA obligation, the Environmental Protection Act obligations? Those are not addressed by this bill, as I understand it.

Mr Rowe: No.

Mr McGuinty: That's the technical assessment. Isn't that what takes up so much time? This bill is not going to resolve that.

Mr Rowe: For example, for a landfill hearing it takes a great deal of time. Just from what I'm hearing among the experts I work with, there doesn't seem to be much of a consensus out there that the government's approach in using what are called generic designs, sort of almost like a bathtub that you can place in an area without worrying about the local context as much as you would traditionally — not many people would go with those kinds of designs because they have so much insurance built in that they're very, very expensive. People will still prefer to design with the site and feel that would probably be less expensive, but those designs take longer to review because it's not just a standard design.

There will be a lot of time spent reviewing those things, so the time lines that are here for the Environmental Assessment Act might not be easy to comply with. Some proponents run their Environmental Protection Act work concurrently with their Environmental Assessment Act work. So there's going to be a jostling between the two when the EPA reviews are taking longer than the EA reviews. Some people get their EA approval and then go out and do their EPA work. So they'll get their EPA approval, but there's still going to be a long lapse of time before they get a final approval for a landfill.

The Chair: Your time is up, Mr McGuinty. Ms Churley, please, for the NDP.

Ms Churley: You raised a number of concerns that I concur with. I don't have time to get you to elaborate on

all of them now. In particular, on the terms of reference, I'm glad you referenced the need to clarify somehow how to deal with changing circumstances, because that's a major concern. We'll be asking the government to look at that.

I wonder if you can elaborate for a moment on another issue, and that is, as I think you put it, the changing political cycle, how different parties at different times could interpret the act differently.

Mr Rowe: I think we see an example of what can happen with the IWA process. I worked for both the city of Vaughan and the town of Pickering on that process, and we saw that process terminated at the end. Whether that was a good or a bad thing, it's an example of what can happen when there may be differing political agendas relating to a project and a person may feel the need to get an approval within a certain political time frame. But now, with the ability of a minister to reverse even after it's gone to a decision — the IWA hadn't gone to a decision; it was still at the preliminary stages of the hearings — that increases the politicization of the process, whichever way it goes.

1200

The Chair: Mr Rowe, thank you kindly for your presentation today; very comprehensive.

Before we recess, if I may remind members to please check out of your rooms and cover any of your own incidentals. We will reconvene —

Mr Hoy: Mr Chair, we have someone in attendance this morning who would appreciate some time to give a presentation, a Mrs Thompson. She's here. I think 15 minutes would be very gracious of the committee if it would allow her to speak. Do we have agreement?

Ms Churley: Agreed.

Mr Galt: I think our caucus could agree with that. I would bring to mind though that we did originally agree that there would be nine per day, three from each caucus.

The Chair: We have only eight at the moment and there's room for one more.

Mr Galt: No problem with that.

The Chair: If I can suggest we come back then at 2:15 and listen to Ms Thompson for 15 minutes, would that be adequate?

Mr Galt: At 2:15 or 1:45?

The Chair: At 2:15.

Mr McGuinty: Mr Chair, I raised a question earlier on, at the time that a witness was present, and I was just wondering if Mr Galt might take note of that. I request that he would table a response. That was with respect to the issue of if I felt that I ought to have been given notice and been involved as a person interested in the terms of reference, if I hadn't received that notice, what right of appeal or what remedy would I have, if any?

The Chair: Mr Galt, would you like to respond to that at the moment?

Mr Galt: Sorry. I was talking about the presentation of this 15 minutes. That was the topic we were on.

The Chair: Yes, that's right.

Mr Galt: I wonder if we just go ahead and have it right now, if the lady is here and would like to proceed, rather than put it off to 2:15.

The Chair: Would you prefer to do that right now? Okay, that's fine. We can begin right now.

GRETA THOMPSON

The Chair: Ms Thompson, welcome. Could you please identify yourself for the purpose of Hansard. We will have a total of 15 minutes. Whatever time is remaining from that we have a chance for questions. If there isn't, then that will be the time.

Ms Greta Thompson: I don't have a formal presentation. I'm your in-house resident expertise. I'm representative of what you're talking about, the public. I've tried to survive a landfill in my own backyard for 30 years. I go back to the days before intervenor funding came about, through the stages of requesting it. I've been through all three governments: the Davis years, the Peterson years, the Rae years. I'm here to help you.

The Environmental Assessment Act isn't working for several reasons. One is that the conditions don't stick after the assessment hearings are held. The discretionary powers of the director are too broad. The expectations placed on residents to enforce those conditions are impossible to meet.

I have another suggestion that I would like you to consider and then I'll open it up to anything you want to ask me, and if you have no questions, that's fine.

The landfill hearing process is much too expensive. We can't afford it any more. It's not doing the job it's intended to do. I would suggest to the committee to pull the landfill portion out of the Environmental Assessment Act. I believe the best we can do now are regional sites with tightly enforced boundaries, with rules that work.

They are fundamental decisions that need to be made; we don't need lawyers, we don't need expertise to make them. The process itself under the present Environmental Assessment Act is dividing communities. I think those of us who were involved in Toronto — and I've been involved in assessment hearings throughout this province, including our own — it divides communities. There are those who are opposed for financial reasons, those who support for financial reasons, those who oppose for environmental reasons. People have to go back to their communities and try and survive it. Thirty years later you'll find that all those conditions and all those hearings didn't protect anything, not even 1%. We need to find a different way. I think we can do that together.

I have no secrets; I'll answer any question you want to know. I'm not on any political side. I'm here to help you because we need to work together. The government has opened the door for us to have an opportunity to change the way we do things, to do them better to protect our environment, to do them at a cost we can all afford. My dream is the best site and the safest place in a way we can all afford.

Mr Galt: Thank you very much. I certainly appreciated your comments. A lot of what you're saying is what we're struggling with. We have to keep in front of us that the main objective of this whole exercise is protecting the environment. As I listened to the other four presentations — I don't mean to slight anybody — and the discussion, we were talking a lot of process, paperwork; just a lot of other things. The number one thing up front, as you're saying, is environmental protection. Certainly, as I was involved over the last few years getting into this political arena and hearing the problems in the past of

environmental assessment and the hearings, it was an exercise of process and paperwork, and really we were forgetting — at least it was a feeling I had — this main objective of what it's all about.

I think you summed it up nicely, that the community gets divided on issues on environment and on financial issues and sometimes it's "not in my backyard." I hear from your comments that you ended up with a landfill site in your backyard. We have put out, and maybe you're aware of them, new regs for landfill sites.

Ms Thompson: I'm aware of them, and they fail completely.

Mr Galt: Have you responded to those?

Ms Thompson: I made arrangements to go to Toronto. I personally took the Via train down and paid my own way to meet with the waste management reduction. Unfortunately, after I got there they couldn't find the time to meet with me.

We talk about intervenor funding; you had some questions on intervenor funding. The best funding, and very little funding, up front on pre-consultations can resolve more of the residents' issues than the whole process. I think if you go back to the Green Lane environmental hearings, which lasted five days, which we participated in — the Sarnia hearings were two days. If you put a little bit of money up front for the solicitors of the residents to work their way through those fundamental decisions that have to be made that concern the residents, you'll find you'll spend a lot less money and solve the problems a lot better. In the end you need an arbitration resolution committee. After you set the rules you need a way to arbitrate them when they're broken, or to enforce them. You're going to have to come to terms with that.

It could be two-pronged. My suggestion is to go to regional sites and start over with landfill rules. The other prong could be to change the way the process works now, and you can do it with a lot less funding. We set some precedents without any intervenor funding many years ago. We went to church basements and solicited those funds to protect our environment. My backyard is on the table because we have to get past where for a regional site. If we don't get past that we'll never solve our problems. My backyard, although I've tried to protect myself from it for 30 years, has been placed on the table as a regional site to find a new and better way to manage Ontario's waste. We have the chance here. Let's take it.

Mr Galt: Did you receive any compensation for living near a landfill site and loss of value of property?

Ms Thompson: No, sir. I have rejected compensation. Direct and indirect costs in less than four years exceeded \$100,000 to try and survive a landfill. The expectations on the residents after the hearings are much too great. That's where the system fails — monitoring. We don't have the staff, and ministry staff will monitor the wrong wells and base their decisions on tests they never took. There's not the staffing. The monitoring system and the ministry's performance are abysmal. It won't get any better with less staffing and less money.

Mr Hoy: You mentioned in the beginning, in your opening, that the director had wide-ranging discretion. Do you have an example of that?

Ms Thompson: Yes. We had a certificate of approval which had a strict condition that our site would serve five counties. We paid thousands of dollars out of our own pockets to get this condition before intervenor funding. It was five counties. The proponent wanted an all-Ontario licence. At the time that a government was purporting local responsibility for local garbage in one area, which was Toronto, in the other area that same government decided to grant an all-Ontario licence, to break that condition so hard fought for and so hotly contested, behind closed doors, over our objections, without any hearings, in fact before we even got a response to our objections. We had a condition, we worked hard for it and it was broken 15, 20 years later.

The reasoning the minister gave was to keep the site viable, but a year down the road, when the annual reports came out, we found out that the site was already at maximum. It didn't need the all-Ontario licence. That's an example of a condition. It has destroyed the environmental assessment process. It happened during a time when we were very successful in a movement towards local responsibility and getting people to be accountable for their garbage.

I'm not blaming one specific government. It's happened through the 30 years. When one of the lawyers suggested that we put it out of — in our case, we believe we got the site because it was in a politician's backyard and he didn't want it, so we ended up with it. I fully relate to all of where we've been and where we are today.

Ms Churley: I just would like to say I'm glad we had the opportunity to hear from you, because it's good to hear from a citizen who's been involved in the process for so long. I would suggest to Mr Galt that perhaps he or the minister should pay your way to come back to Toronto and this time to give you an opportunity to be heard, because it sounds as though you could certainly help from a citizen's perspective.

Ms Thompson: I have been heard many times, including by standing committees.

Ms Churley: But I mean in particular the latest document you had attempted to have some input to, and couldn't be seen, I understand.

Ms Thompson: We're in a crisis in landfills, ladies and gentlemen. We need to do something now. You can't have another committee and have public input and not make some very tough decisions that have to be made. We've got to do it cheaper. We've got to do it better.

Ms Churley: Thank you. That's fine.

The Chair: Thank you very much, Ms Thompson, for your presence here today.

The Chair: Just before we recess, Mr McGuinty, do you want to say something?

Mr McGuinty: Sure, by all means. The matter I raised earlier was that I had a question for one of the witnesses regarding what rights I would have if I felt I had wrongfully not been categorized as a person interested, so if there's a proponent who is drafting terms of reference and does not consult me — I'm looking to the government to perhaps table a response to that. Unless you have that answer right now, I would appreciate that.

Mr Galt: We'll try and have it for you tomorrow.

Mr McGuinty: Great. Thank you.

Ms Churley: Just briefly, in clarification of your question, it's my understanding from the discussion that particularly around the terms of reference there's certainly nothing at this point in the legislation that says you have to be consulted anyway. That's something we'll be asking the government to enshrine in the legislation. Mr Galt has said the only provision, and it's outside the legislation, is that the terms of reference will be posted on the EBR for people — anybody — to respond to, give comments on, so I take it you're asking more specifically around the upfront consultations, not including the terms of reference, but overall if you happen to consider yourself an interested person and to be left out of that.

Mr McGuinty: My question arises from section 6.1, which requires that a proponent, when preparing an environmental assessment, "shall consult about the undertaking with such persons as may be interested." I guess I'm looking for a definition of who the heck are people who might be interested and what happens if you are such and have not been contacted.

Ms Churley: Right.

Mr Galt: If I may, rather than spending extra time at this point, maybe if we could just get in writing what you would like, we'll be more than pleased to respond to you. Just jot it down on a piece of paper and hand it to me at noon or this afternoon and we'll certainly look after it.

The Chair: We'll have lunch together and talk about clarifying all this. We are recessed until 2:30 this afternoon.

The committee recessed from 1215 to 1427.

CITIZENS ENVIRONMENT ALLIANCE

The Chair: Okay, ladies and gentlemen, we had a good morning; I expect we'll have a good afternoon as well. Our next witnesses are the group from the Citizens Environment Alliance of southwestern Ontario.

Mr Rick Coronado: Thank you very much. I'm very pleased to be here today. My name is Rick Coronado, and I'm the coordinator for the Citizens Environment Alliance of southwestern Ontario. On my right is Marcia Valiante, who's an environmental law professor from the University of Windsor. I'll start with our comments.

First of all, thank you for giving us this time for our presentation. The Citizens Environment Alliance of southwestern Ontario is a grass-roots, regional organization with offices in downtown Windsor and on the campus of the University of Windsor. We have been in existence since 1985 and we are an alliance of many sectors of the community. We represent individual citizens and organizations; for example, our comments today have been endorsed by the environment committee of the Windsor and District Labour Council and the CAW Windsor regional environmental council. Both these organizations are members of the Citizens Environment Alliance. We are also a member of the Windsor and Area Coalition for Social Justice.

There needs to be an effective environmental assessment process in Ontario, one that ensures environmental protection. We agree that the existing process needs to be changed, but the core of the environmental assessment

must still be, first, comprehensive consideration of environmental impacts and alternatives and, second, meaningful public involvement early and at key stages throughout the process.

The Environmental Assessment Act has been applied to a wide variety of significant undertakings by the public and private sectors. In our region it has been used in landfill projects, incinerators, hydro-electric developments, sewage works, roads and marinas. Its importance to the public is as a pollution prevention mechanism; that is, it is used prior to detailed project design and implementation as a way of minimizing environmental impacts on communities and the environment. Furthermore, it is important to the public because it encourages public involvement in seeking more viable alternatives and consultation with experts. Including the public in all important stages of the EA process is a way to resolve conflict and get better projects.

The role of the public in the EA process cannot be underestimated. For example, it was fundamental for the public in Windsor to have input into the design of the Windsor waterfront marina. Because of the EA act, the public was consulted and design changes were made to reflect their comments. It provided an important forum for consultation and discussion and the project was approved because of it.

While we agree that the process can be improved, we are concerned that an open and effective process remain. For us, the bottom line is that the amendments must give us a process that is fair to the public as well as proponents and that will ensure environmental protection. Efficiency alone is not enough.

Now Marcia will provide the details of our concerns about the EA amendments.

Ms Marcia Valiante: Good afternoon. I just want to start by saying thank you for the opportunity to address the committee. I'll start by telling you who I am, because you don't know who I am. I'm a member of the Citizens Environment Alliance but also an associate professor of law at the University of Windsor. I'm a former member of the Environmental Assessment Advisory Committee and, with another of my colleagues at the University of Windsor, I conducted the formal review of the intervenor funding project for the Ministry of the Attorney General, so I have a fair amount of background in this. I also practised law for a while and did environmental assessment as part of that practice on all sides, acting for the board and other participants in the process.

I want to say, by way of introduction, that in my mind the Environmental Assessment Act is the most important environmental planning statute in Ontario. After 20 years of experience with it, it's clear that there are both strengths and weaknesses in the existing process; it's not just a question of weaknesses in the existing process.

The materials that were released with Bill 76 state the minister's intention to amend the act to make the EA process more timely, less costly and more effective with environmental protection as the overriding objective. These are worthwhile goals which, if properly balanced, could improve the process. But unfortunately Bill 76 as introduced will not accomplish these goals and will in

fact undermine another goal that's not mentioned, that of fairness.

The most comprehensive report on EA reform in Ontario is the 1992 report of the Environmental Assessment Advisory Committee. The principles in this report should guide amendments to Bill 76. Some of the EAAC's recommendations have already been adopted through administrative reform, some are included in Bill 76 and some are completely ignored. The risk for the EA process is that many of the EAAC recommendations that are included in Bill 76 are adapted in such a way as to threaten the integrity of the process, which could have an impact on environmental protection in Ontario.

The principle that EAAC emphasized, and that I would like to emphasize, that should guide amendments is a firm commitment to the consistent application of the essential principles of environmental assessment as a concept. Those are the comprehensive evaluation of rationale, alternatives and environmental impacts of undertakings and meaningful public participation throughout the entire process.

Now I've given you a more detailed brief and I want to emphasize a few areas within it, and then we can take questions on the more detailed section numbers and all of the detail of it.

There are three areas I want to emphasize. One is the need to guarantee a central role for the public in the environmental assessment process. Bill 76, or the material in it, the title of it in fact, purports to "enshrine public consultation" in environmental assessment.

Public consultation has been the practice with environmental assessment for a very long time, and this act does for the first time require proponents to consult. However, there are important steps in the process where public consultation is not required in the bill and should be. There's only one place where it's actually required in the bill. It should be required at every important stage in the process.

First of all, it should be required in the formulation of terms of reference for individual and class environmental assessments. The materials that were put out seem to indicate that terms of reference will go on the registry under the Environmental Bill of Rights. Unless the Environmental Bill of Rights is amended and the regulations are amended, this is not possible. You can't just put anything you want on the EBR registry. It hasn't happened yet and it probably won't happen with this. If that's going to be the place where terms of reference get public consultation, there needs to be a statutory amendment and a regulatory amendment to allow that to happen, and there's nothing in the bill right now that allows that, either for individual environmental assessments or for the class process.

Another place where it's important for public consultation is in the development of guidelines that govern the process. There is nothing in the act about how guidelines will be developed, although there is mention that policy guidelines will be developed and the Environmental Assessment Board will be required to consider them in making a decision. If those are to go through the registry process, then that should be clearly spelled out. In my

view, that's the minimum process that should be required for public consultation on guidelines.

Another place where there's no requirement for public consultation is in exemption, designation or bump-up decisions. The act contains several places where decisions are made about who is going to be covered by the act, and there's nothing in the act, as it's written in Bill 76, that would require the public to be informed until after the fact. That to me is not acceptable because of the importance of those decisions for application of the process.

Another place where there's no requirement for public consultation is during the government review period when terms and conditions are being negotiated, which is how it happens in practice. That's the stage where terms and conditions are negotiated between the ministry and proponents. The bill is inadequate because it doesn't require the public be party to any of those negotiations, or at least comment on any of them.

The other thing that the bill does not deal with is the ability of some sectors of the public to actually participate. It's a hollow right to be given the right to participate when you are not financially able to do so. You don't have the resources available to allow you to review documents, to photocopy documents, to have access to experts. It doesn't help you very much to look at a statute and say, "I have the right to participate." One of the things that's left out is the issue of participant funding or any other mechanism for allowing the public to have access to experts, through the ministry, the board or anywhere else.

A second issue that I wanted to emphasize is the application of the process. Ideally, the EA process should apply to all undertakings that have significant environmental impacts potentially there. The reality now is that the act applies almost exclusively to public sector projects. The area of waste management is the only one where private sector projects have been designated on a routine basis. Ontario's the only jurisdiction in Canada to do this, to base a decision about whether the act applies on the basis of who the proponent is rather than on the basis of environmental impact.

1440

The act says that all public sector projects are under unless they're exempted, and the fact is that many public sector projects are exempted. There are whole ministries that are exempted from the act, and a whole range of projects have been exempted over the years, some with clearly significant environmental impacts. But none of this is addressed by Bill 76, and in my mind it should be.

Also, the bill includes a whole new set of ways for the process not to apply. The minister is given discretion to make orders declaring that the act does not apply, and those orders will not go through the process for regulations, which means they aren't going to be listed on the EBR registry, which means the public isn't going to be involved. My comments overlap and come back on each other.

The ability under the act now to make exemptions is there through the regulation process, but old section 29, which would have required those exemptions to be made as regulations, is gone. It's an administrative power to do that.

There is also the power to make orders that vary the contents of EA documents. The central element of an environmental assessment is the requirement to assess environmental impact, assess alternatives and justify a project in your EA document. The new bill retains the requirements that were in EA documents under the old subsection 5(3) but gives blanket power to make exceptions to that. You're going to have a whole range of proponents who are going to be getting different requirements from case to case. The variability in the process is going to be incredible, and the lack of predictability and the lack of certainty for proponents and the public is going to grow enormously.

The other areas where there is the power to get out of the process is the ability, under the harmonization sections, to declare that the act doesn't apply. There is also the ability — I will talk about the class process in a minute — to allow a whole set of projects to go through the class process without any criteria about what's an appropriate kind of project to go through the process. Also under the class process there's a new power to make an order applying a class EA approval to any proponent without any criteria and without any limit on how that order will be made. There's also the existing power to exempt that's retained in the bill, and that's done by way of regulation.

This to me is backwards. To design an act, you should start out to find a way to require consistent application of appropriate criteria, not to take a Swiss cheese approach to the act and say, "It only applies occasionally to the poor proponent who doesn't have enough political influence to get out of the act or to get out of the requirements of the act."

To me that's inappropriate, because one of the values that makes for an efficient process and certainly an effective process is consistency of application and certainty. You know what's going to be required of you; you know when you've met your requirements. There are a lot of ways that have been looked at, certainly in the 1992 EAAC report on EA reform, as to how that could happen, which is a combination of sectoral guidelines that give a lot of detail about how to comply with the more general requirements of subsection 5(3), coupled with the use of time lines and deadlines, some of which are in the act, to make sure that happens in a timely way. So there are ways around that. You don't have to just give a blanket discretion to allow the minister to get out of the process.

The other concern about the amount of discretion that's here is that there's a section in Bill 76 that allows every single one of those decisions to be delegated from the minister to an employee of the Ministry of Environment. One of the reasons to have the minister keep that discretion is that the minister is politically and legally accountable. An employee of the Ministry of Environment is probably more vulnerable to lobbying and influence on an ad hoc basis and less accountable to the public. That's a major concern.

The last thing I wanted to talk about, and then we can go to whatever questions you have, is the provisions relating to the class EA process. I think it's important that class EAs are finally going to be included in the

Environmental Assessment Act, because they've never been there before; it will legitimize their status and, if the provisions are appropriate, will regularize the process, because each one of the class EA documents that's been approved has a slightly different process that's involved in it.

There are a number of issues that I wanted to raise with respect to class EA. The first one is, how do you decide what goes under a class EA? That's the threshold question of which groups of undertakings are appropriately dealt with through the class process rather than through the individual EA process.

This has been looked at by the ministry set of guidelines and also has been looked at by EAAC. What has come out of that is that criteria are necessary to ensure that there is consistency over what kinds of projects are dealt with through the class process. Those criteria are not in Bill 76. Because the class process has less onerous requirements for carrying out of individual projects that come within the class, the criteria should be specified in the act. To me, the class process should only apply when projects are recurring, limited in scale, use proven technology and have predictable, minor and easily mitigable environmental impacts. So Bill 76 should be amended to include those criteria, and subsection 14(2) should be amended to require that the EA document specifies how this particular class meets those criteria.

The class process is, with some modification, a mirror of the existing class process that isn't sanctioned by the act. The difficulty with the class process in the act is similar to the difficulty with the individual process, which is that terms of reference can be made without public involvement, exceptions can be made about what materials are included in a class EA document and, in particular, the considerations that are supposed to go into a class EA document; subsection 14(2) does not require a consideration of alternatives. That's the heart of environmental assessment, and it's not now required in Bill 76 for a class EA document.

There are a number of other issues which we can talk about if you're interested. The other issue I wanted to raise about class EA is the bump-up provisions. A bump-up is just whenever a project falls within the class that's already been approved, what mechanism is there to get that to a full EA if that's the appropriate way to go with a project.

There are a number of considerations that should go into that, but one of the things that needs to be mentioned is that the provisions in the bill do not have any requirement for public notice or consultation prior to the making of a bump-up order. This is unlike the guidelines that have been approved by the Ministry of the Environment and Energy with respect to bump-up orders.

The other consideration with class environmental assessment that I wanted to mention is the question of monitoring. Once a class EA has been approved, the projects that fall within it — there's no monitoring by the ministry of the environment over those on a regular basis of how that class EA is being implemented.

The bill should be amended to require that proponents who have a class approval should provide information at least on an annual basis on the implementation of their

class approvals. What this does is it provides information on how effective they've been at carrying out their class approval and also it's a feedback mechanism in terms of what the environmental impacts have been and what the efficiency of the overall class EA process is so that the next set of class EA approvals will benefit from that experience. There's nothing in the bill that requires that, which I think is a serious omission.

I'll stop there, and we can take any questions, because our time's kind of run past.

1450

The Chair: Thank you for your presentation. We have 8½ minutes, so we've got 2¾ minutes per caucus. We'll start this afternoon with the Liberal Party.

Mr McGuinty: Thank you very much for your presentation. I wanted to ask you to comment a little bit about mediation and the role that you might see it playing. Is it a positive development, and who ought to be included in mediation sessions?

Ms Valiante: I think there are two places where mediation is mentioned: with respect to terms of reference and then with respect to the decision before referral to the board.

The issue of mediation, the way it's addressed in that section, and I think it's section 8 — my concern about that is that the way mediation works successfully is that the people who are involved in it are there voluntarily and they're willing participants and that all the participants are there who have a stake in the outcome. The way this is worded it appears that the minister could simply order that certain parties be party to the mediation without ensuring — there's not necessarily any assurance that the appropriate parties are going to be there or that all the parties are going to be there willingly.

I think if you look at the Canadian Environmental Assessment Act, the federal counterpart, the way they've dealt with mediation is that the minister has the power to refer to mediation, but the way it's phrased is that the minister can determine whether mediation has some chance of success or is an appropriate mechanism to use in any individual circumstance, and that will depend from case to case.

Mediation has been used a fair amount in the EA process, often successfully, and the board does mediation and there have been mediators called in at certain points in the process, and that has worked successfully in the past, just in the last few years.

Mr McGuinty: Should that be a public process, mediation?

Ms Valiante: Mediation? You mean the actual negotiation?

Mr McGuinty: Yes.

Ms Valiante: It's not usually a public process. If it's a very large mediation, it's effectively a public process, but one of the useful things about mediation is that people come in and they work from the point of view of what interests they have at stake and how they can accomplish their interests, and so it's essentially an off-the-record kind of process, and at a certain point it becomes a very public process.

Ms Churley: Both the minister and the Premier have made numerous public commitments to the principle of

full environmental assessment, particularly in relationship to landfill and other waste disposal facilities. Would you say Bill 76 keeps that commitment?

Ms Valiante: With the amount of discretion in here, I would say that's not necessarily going to happen. With discretion, it could happen, but I think lobbying finds its way to the point of least resistance, and the more discretion that you have, the less likely it is that there is going to be a consistent process that's going to be applied. Certainly there's a lot of room for not applying the full EA process.

Ms Churley: Could I ask a question? A specific example: If there is an application for an incinerator, and normally you would think it would be necessary in that case to look at the three Rs, for instance, because they use the same feedstock, it's my understanding of this bill that it would be at the discretion of the minister and the terms of reference as to whether or not they would have to look at alternatives and that's where the discretion comes in. There could very well be, in other words, a siting of an incinerator without necessarily having to look at alternatives.

Ms Valiante: I think that's true. The terms of reference become the pivotal document for the whole EA process, and whatever is included in that will determine what the rest of the process has to consider and what will go to the board, even without the minister being able to narrow what the board considers. It's the terms of reference. There's no way to undo that once it's done; there's nothing in here about opening that up.

Ms Churley: So changing conditions would not —

Ms Valiante: There's nothing in here that would allow that to happen. The problem with that, from a public interest point of view, is that right now there's also no public input to the terms of reference. It's a very early stage, and the amount of time that's included for getting the public involved and having their comment on terms of reference is very narrow. You don't even know that you're necessarily a group yet; you're already on the hook and you have no chance of ever undoing that.

Mr Galt: Thanks for your presentation — quite informative. I would like to point out to you that any changes in guidelines, changes in regulations or any exemptions being addressed all do appear on the Environmental Bill of Rights registry. It's standard procedure, and this bill should not change that direction. It's something that —

Ms Valiante: Can I say something?

Mr Galt: I'll just wind up here and then let you. It's something that's just sort of standard and does occur. One of the complaints we're getting is that there's too much on that registry, especially from environmentalists, that it's difficult to find the significant environmental concerns and issues.

What I did want to address to Mr Coronado was a statement he made that the EA process helps to resolve conflict. Yes, I can see it in a few instances, but from my experience and what I'm hearing, it seems to create conflict. Do you have some suggestions, something we can do with this bill or in the regulations, to reduce some of that division in a community? That's most harmful and certainly not the intent of what we want to accomplish.

Mr Coronado: The intent from an environmental standpoint, obviously, our first priority, is to protect the environment. As we've heard already, looking at the alternatives to any process is significant, it's a major priority, and it should be where the discussion, comment and maybe the disagreement comes from. If we look at the alternatives, we all at the table — and I'm talking about proponents and those who are out to seek the alternatives — if we understand what the alternatives are and outline effectively how those alternatives work, how they can benefit the community, I don't really see how there can be any further debate or division in a community unless it's, of course, the bottom line and there's profit involved.

Ms Valiante: About your comment about things going on the registry, I recognize that regulations and anything that's considered a policy will go on the registry. My concern is that there are some things that fall under here that don't fall within the EBR categories of things that go on the registry. They aren't policies, they aren't regulations, they aren't statutes or instruments etc. That was my concern.

The other thing about the registry is that there are times — and guidelines are a good example of that — where you're not going to get the kind of input that you really need on guidelines just by going through the registry. You need some kind of a more advanced public consultation mechanism. In the past, most of the guidelines, or a fair number of the guidelines, on EA have gone through a public consultation process through EAC, which is now terminated, doesn't exist any more, and that mechanism of public consultation made for greatly improved guidelines. You're not going to get that amount of input on a 30-day comment period on the registry; it's very difficult for groups to do that. That mechanism doesn't exist any more. That's a concern.

The Chair: Thank you kindly for your presentation. Our time is up. We appreciate your efforts and the time you've taken to be with us this afternoon.

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LAIDLAW INC

The Chair: Our next witness is from Laidlaw Inc, Mr Bob Redhead. Welcome.

Mr Bob Redhead: Thank you, Mr Chairman and members of the committee. My name is Bob Redhead. I'm director of corporate and government affairs for Laidlaw Inc and I'm speaking on behalf of Laidlaw's companies here in Ontario.

I want to thank you for the opportunity to appear this afternoon. We're certainly pleased to be here before the committee on Bill 76. As you know, Laidlaw companies are industry leaders in the provision of solid and hazardous waste management in Ontario. What may not be widely known is that it was a Laidlaw driver who invented the original blue box and piloted the concept of curbside recycling. Laidlaw has 39 waste management facilities in the province of Ontario, providing virtually the whole spectrum of waste collection and treatment, including highly specialized service for PCBs and the recycling of waste paints. In fiscal 1995, Laidlaw's revenues from its waste management services in Ontario

approached \$300 million. I've provided copies of my remarks, and with some of those, there were copies of our financial material.

Laidlaw strongly supports the initiative of the government to update the current Environmental Assessment Act to make the environmental assessment process, in the words of the Minister of Environment and Energy, Brenda Elliott, "less costly, more timely and more effective." We agree that environmental protection must remain the overriding objective of the act and the mandate of the Ministry of Environment and Energy. We also agree that the amendments proposed in Bill 76 will help to deliver better environmental protection through a process that is more certain as well as more accessible, provided that the initiative is comprehensively integrated with other planning and environmental legislation, such as the Planning Act, the Environmental Protection Act and the Municipal Act.

Laidlaw believes that environmental assessments and, in particular, hearings before the Environmental Assessment Board have all too often been bogged down because of the emphasis on process issues rather than the application. Although a fair and open process is important, the focus of any environmental assessment should be on the evaluation of impacts of the project on the environment and whether those impacts are suitably mitigated.

In addition to expressing our general support for the initiatives contained in the bill, Laidlaw wants to take this opportunity to offer some recommendations on how the bill can reduce risk, increase the certainty and effectiveness of the environmental assessment process in Ontario and get Ontario moving once again. Below is a discussion of some of the key amendments made by Bill 76 and our comments on each.

Laidlaw supports the government's proposal to harmonize Ontario's environmental assessment process with the federal process and other provincial processes to ensure that each project undergoes only one environmental assessment. We trust that the ministry will take the action proposed in subsection 3.1(2) as quickly as possible so that the proponents will not be faced with uncertain requirements or duplication of effort.

Government and business cannot operate without deadlines and schedules, and Laidlaw adamantly believes that the environmental assessment process is no exception. The absence of deadlines and schedules is clearly one of the reasons for runaway costs in the existing environmental assessment process. Deadlines are very necessary to ensure that environmental assessments are prepared and evaluated as quickly and efficiently as possible. Hearings that last for years do not benefit proponents, opponents, intervenors or the environment. Bill 76 indicates that deadlines will be imposed on the ministry for its review of the environmental assessment — subsections 6(5) and 7(2) — and on the public for the submission of comments or for requesting a hearing — subsections 6.5(2) and 7.2(2). However, the bill gives no indication of what these deadlines will be, so we cannot judge their overall effectiveness.

Some of the deadlines imposed on the proponent, on the other hand, are set out in the act. For example, the proponent is given seven days to remedy deficiencies

under subsection 7(5). In our view, specific deadlines will need to be imposed on government, the proponent and interested participants in the legislation, rather than clarifying them in regulations as suggested by clause 39(i), and flexibility incorporated in the legislation to amend such deadlines if circumstances arise where these deadlines are inappropriate. The threshold for amending such deadlines should be high enough to avoid amendments merely for convenience, but allow for the exceptional case.

Laidlaw fully supports the initiative of providing the power to appoint a mediator. Mediation can often help to resolve disputes in a more cooperative manner, both satisfying the concerns of all parties and saving everyone time and money. Laidlaw has in the past used mediators to assist in its processes. Mediation should not only assist in narrowing the number and scope of issues that must be considered in an environmental assessment hearing, but it can make hearings unnecessary in some cases. For example, we have had here in Ontario recent examples, in Grimsby, where mediation between the proponent and interested parties led to fruitful discussions that eliminated the need for a hearing. In addition to the provisions set out in Bill 76, the government should consider including a requirement that all parties must approve the choice of mediator. A mediator who is not accepted by the parties will be ineffective. Laidlaw also supports the option of in camera mediation.

The requirements for an environmental assessment set out in subsection 5(3) of the Environmental Assessment Act have not been changed. Laidlaw is surprised that this opportunity to clarify and streamline one of the most contentious and difficult subsections to the act has not been taken. We recognize that the bill does require the proponent to submit terms of reference to the ministry, to be approved by the minister, which will guide the preparation of the environmental assessment. The approved terms of reference may provide that the environmental assessment consist of information other than that required by subsection 6.2(2) of Bill 76 or subsection 5(3) of the current Environmental Assessment Act. It is not clear whether this means that the terms of reference may only require that additional issues be considered in the environmental assessment or that some of the requirements set out in subsection 6.2(2) may receive only limited consideration or even be deleted from consideration. Laidlaw is of the view that if, for example, alternatives to the undertaking or alternative methods of carrying out the undertaking are not relevant or of interest to the proponent and the participants in a given situation, the terms-of-reference exercise should be able to remove them as an environmental assessment requirement. Laidlaw does not believe that the requirements of subsection 6.2(2) will need to be imposed on proponents in every case.

Another lost opportunity to amend the act is related to the issue of need. The Environmental Assessment Board has often required proponents to demonstrate the need for the project in order to obtain an approval, causing considerable difficulty for both public and private proponents. Obviously, a private proponent would not proceed with the investment required for such undertak-

ing if there were no business need for revenue or added shareholder value. This business judgement does not require review or second-guessing by third parties.

Since demonstration of need is not explicitly set out as a statutory requirement in the act, it is not a requirement in the preparation of the environmental assessment. However, the requirement has been imposed by the Environmental Assessment Board and by ministry reviewers in the past. Laidlaw believes it must be expressly removed or, at minimum, limited to public proponents in the bill. The marketplace will look after need without board or ministry intervention.

Laidlaw recognizes that the Environmental Assessment Board is governed by a regulation to the Environmental Assessment Act but believes that Bill 76 does not address or appropriately clarify the role of that board with these amendments.

The ministry has a wealth of experience in the area of environmental approvals and represents the overall public interest. Laidlaw takes the view that the ministry, in consultation with the proponent and the participants, is in the best position to grant or refuse certificates of approval and to draft terms and conditions. Currently, projects required to go before the Environmental Assessment Board for a hearing usually end up with a review of and ultimately a reconsideration of certificates of approval that have been drafted by the proponents, parties and/or the ministry. Laidlaw takes the view that the ministry and, in particular, the approvals branch, with its vast experience in approvals, should not relinquish its significant role over approvals simply because a project is subject to the Environmental Assessment Act, particularly in light of the board's relative inexperience in drafting and reviewing practical approvals.

The proposal in Bill 76 to give the minister the power to direct the board to hear testimony on only specific matters is a step in the right direction. However, Laidlaw would recommend that this approach be taken one step further, to require that the board only hear testimony and/or make decisions on matters as directed by the minister. Once the issues before the board have been decided upon, the project can be returned to the ministry for its approval and final drafting and review of the certificate of approval. The bill should clearly scope the board's power to deal with specific issues, whether they be technical or process issues, that are in dispute as directed by the minister, and when and if those issues are resolved, the ministry should be responsible for the certificate of approval in light of the board's decision on those issues.

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In those few special cases that require a hearing, another issue that is not dealt with clearly in the proposed bill is the issue of the overlap between Environmental Assessment Act hearings and Environmental Protection Act hearings, or hearings under other legislation. For example, if there are no subsection 6.2(2) issues to be dealt with, it may be more appropriate for a proponent to undergo the Environmental Protection Act process to deal only with technical environmental issues.

We note that the proposed bill does provide the minister with the power to defer deciding a matter if the

matter is being considered in another forum, and the minister may also refer a matter to another tribunal if she considers it appropriate. This may be an attempt to ensure that there is no duplication between environmental assessment hearings and hearings under other legislation. Laidlaw supports any initiative to reduce overlap in terms of hearing requirements, but again would prefer more clarity and certainty with respect to the conditions under which a matter will be subject to an Environmental Protection Act hearing instead of an Environmental Assessment Act hearing.

Laidlaw approves of the codification of the requirements to "consult with such persons as may be interested" in the particular undertaking and anticipates an immediate need for further guidance on that consultation. For example, a definition of "interested persons" would be helpful in terms of guiding proponents in their public consultation programs. Should an undertaking go to a hearing, the board may ultimately rule on whether the proponents' judgement in this regard is accurate. That is far too late in the process to be assessed.

In the same way, Laidlaw would also anticipate an immediate need for guidance on the issue of participant funding; for example, during discussion of the terms of reference. With the sunset of the Intervenor Funding Project Act, proponents are left in a situation where there is no certainty with respect to how they should react to requests for funding. Proponents could take the view that since legislated intervenor funding is over, there is no requirement to fund any group that opposes the undertaking. On the other hand, a proponent who takes this view may, at the end of the day, find itself in a situation where a board decides it has not lived up to its public consultation obligations as it did not provide participant funding. Proponents need clarity and certainty with respect to what is required of them, and it would be preferable for that clarification to come from the government and not from the Environmental Assessment Board on a case-by-case basis at the end of a difficult process.

In summary, Laidlaw will continue to support all efforts of this government that will attempt to streamline the environmental assessment process to make it more efficient while at the same time maintaining environmental protection. We appreciate the opportunity to make a submission on Bill 76 and would appreciate any further opportunities to assist the government in revising the bill to reflect some of the suggestions proposed in this brief.

Thank you, Mr Chairman, and I'd be pleased to accept questions.

The Chair: Thank you for the presentation. We begin with the NDP.

Ms Churley: Thank you for your presentation. I wonder if you could clarify, because I don't quite understand it on page 5, item (b), "Hearings under the EPA and other legislation." What do you mean by that? I'm not quite clear on what you're asking the government to do with that section. That's the Environmental Protection Act, EPA, subsection 6.2(2).

Mr Redhead: This particular section refers to if the items that are listed out in subsection 6.2(2) have been addressed and have been resolved and there are no outstanding issues there, perhaps it would be appropriate

to take a project forward under the Environmental Protection Act process where you're really discussing the technical merits of the project.

Ms Churley: Could you give an example, for instance — you've been through a lot of these hearings, I know — of what would constitute, where do you see a situation where that might happen?

Mr Redhead: I think in any project, and perhaps even a landfill project, an incineration project which you mentioned earlier, if through the front end of the process we've dealt with the issues that are social and community in those, and you're really into the issues of the technical merits of the project, it may well be that the Environmental Protection Act process is the most appropriate. I think those would be a case-by-case determination.

Ms Churley: On another issue, and that is public consultation, I doubt so far from the presentations we've had that the communities and the environmental groups and you are seeing eye to eye on these changes. One of the concerns we're hearing increasingly from community groups starting today is that public participation in their view is limited in this new bill. How important have you found in your experience the participation, although it can be a pain in the butt at times, I know, at the end of the day in terms of coming to the best solution for the environment and in some cases I suppose for your company?

Mr Redhead: First of all, the consultation is exceptionally important to the success of the project. All our facilities are in a community. It's exceptionally important that the community understands and participates in the approvals of projects we might undertake in their community and we would certainly seek to determine who the interested parties are. We talked in the brief about perhaps some indication as to how wide "interested" becomes. That's an issue for discussion.

Ms Churley: By the way, are you worried about that lack of definition in there? Would you be more comfortable — because that's something that came up as well, that that's not defined, "interested party."

Mr Redhead: I think that's one of those things — where I mentioned it needs to be done very quickly is once this piece of legislation goes forward, because I think any proponent wants to make sure they have followed the best process, and at the same time the communication and consultation with the community is exceptionally important. There's tremendous value added that comes from that process. We want to make sure that as to the view of a board or of the ministry or of another group that would have a view over a project, we have undertaken a process and have consulted widely, and that would encompass the interests or the view of that other body that has a role in the approvals of the project.

Ms Churley: Am I through?

The Chair: You have 38 seconds.

Mr Redhead: We're getting very precise.

Ms Churley: If there's a general consensus among community groups and environmental groups that there isn't enough adequate, meaningful public participation in this bill, would you support amendments, as have already been asked for, to build in more public participation; not specifically — we don't have time — but would you support —

Mr Redhead: I believe the opportunity for public participation is there and I think a proponent that goes forward without following that good practice goes forward at their peril.

Ms Churley: So you think it is adequate then?

Mr Redhead: I think the bill provides for it and I think it codifies something that wasn't there before.

Ms Churley: Community groups don't agree.

The Chair: We now move to the government side.

Mr Pettit: Thank you, Mr Redhead, for your presentation. You mention on page 6 that Laidlaw would need some guidance relative to participant funding and the sunseting of the Intervenor Funding Project Act and you'd need some clarity as to exactly what is required of you. That aside, is Laidlaw in favour of participant funding?

Mr Redhead: Yes, we are, and we have provided participant funding in a number of our projects and would propose to continue to do so. As I mentioned earlier, I think there's tremendous value added that comes from that participation, particularly early on in the process.

Mr Pettit: I know Laidlaw is a good corporate citizen in the Hamilton-Wentworth area. As a good corporate citizen, would that apply whether that was legislated or not?

Mr Redhead: Yes, sir. I believe that the assistance for people to participate and understand the process, to take steps to better understand or be more conversant with the terms and issues we're dealing with in a given project is very important and very much worth the investment.

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Mr Marcel Beaubien (Lambton): Mr Redhead, since Mr Pettit gave you compliments for being in his riding, I also thank you for being a decent corporate citizen in my riding. Dealing with the proponent aspect, once the proponent prepares the EA and carries out the necessary mandatory consultation, do you think there should be a time line before that proponent submits the EA? At the present time there are no time lines. Do you think there should be a time reference as opposed to leaving it open-ended?

Mr Redhead: You mean a specific time between when we announce that we're going to do something and when we submit a final report?

Mr Beaubien: That's correct.

Mr Redhead: If I understand the new bill, I would think that's part of what takes place in the preparation of the terms of reference. I think determining how long something is going to take is difficult right at the front end, if I understand your question.

Mr Beaubien: If you look at the sheet that's been provided to me, it says that once the proponent has prepared the EA and carries out the mandatory public consultation, before the proponent submits the EA there is no time line. Do you think there should be a time line?

Mr Redhead: You're looking at the document that's attached to the bill, Proposed EA Approval Timelines, this piece?

Mr Beaubien: Yes.

Mr Redhead: I believe, as I said, that's something where during the terms-of-reference preparation you could develop and define that.

Mr Beaubien: So you think it should be defined during your terms of reference?

Mr Redhead: I think it's something you can't define until you get into the process. That would be my feeling. I'm really shooting from the hip here, but that's my feeling. It's not specified there, but it certainly could be specified once you understand the challenge before you. I think it might be very difficult to do that until you really had determined what the issues were, sir.

Mr Stewart: You make the comment that the minister now can "direct the board to hear testimony on...specific matters is a step in the right direction," but you also go further in suggesting "that the board only hear testimony and/or make decisions on matters as directed by the minister." Do you not feel that if you go that little bit further, if the flexibility of what goes before the board is not there, it may be too regimented to do it?

Mr Redhead: Let me tell you what we were trying to address here. The terms-of-reference process to us is a place in which we can define the issues. One of the biggest challenges you find in some of these processes is that in each step of the way you revisit everything that went before. In this particular case we're suggesting that once certain issues have been resolved to the approval of the minister in this case, or another body, the things that remain unresolved are the things to carry forward, and not to carry forward everything. I've been involved in some processes where we spent innumerable days revisiting old ground, and I think not to the benefit of anybody. That's what we were addressing there, sir.

Mr Stewart: I appreciate what you're saying and I agree with you, because you can't take everything forward. My concern is, should the things that are taken forward be slightly carved in stone or should this be recognized depending on what each particular hearing is going to be?

Mr Redhead: That's why I come back to the terms-of-reference piece again. I think that's the place where what goes forward is defined but also what went before was defined. I suspect that, boards being boards, there may be some areas that someone would wish to revisit. The concern we have is that oftentimes we revisit old areas that have been canvassed before.

Mr McGuinty: On page 3 of your presentation you talk about subsection 5(3) of the current legislation and how it may be better if a proponent could be exempted from meeting some of the obligations of the existing legislation in terms of what they have to establish for purposes of the environmental assessment. Can you give me an example of a case where it would not be appropriate to abide by the existing legislation in terms of establishing a description of the purpose and rationale and alternatives, those kinds of things?

Mr Redhead: The approach we're taking here is that in many cases we will have evaluated a number of alternatives before we arrive at a point at which we may wish to continue an existing project or move forward with a different one. I would think that in the case of where the philosophy buried in the front end of the process in the terms-of-reference piece will be able to determine that, there may well be no other alternative worthy to carry forward for a specific undertaking, let's

say, and it may well be that particular requirement could be set aside in a situation where you could come to an agreement that that's the case.

That's the kind of thing we're referring to there, not necessarily to set it aside by virtue of saying in all projects of this nature one would set it aside, but I see this on a case-by-case basis.

Mr McGuinty: You talk about the importance of having these amendments integrated with the Planning Act, the Environmental Protection Act and the Municipal Act. I don't know if you've seen these proposed EA approval time lines yet.

Mr Redhead: Yes, that's what I was referring to, where the "no time lines" one is in the middle.

Mr McGuinty: The minister's intent is to reduce the time to less than one year whereas historically there's been a two-year decision time line without a hearing, as I understand it.

Mr Redhead: Yes.

Mr McGuinty: But isn't the real meat of it found many times, for larger undertakings versus the large landfill site, connected with review of the technical material, and that's pursuant to the Environmental Protection Act?

Mr Redhead: Right.

Mr McGuinty: How is an amendment to the Environmental Assessment Act going to speed up what's going to happen under the Environmental Protection Act? There's no obligation on the ministry staff to review it within a certain time frame.

Mr Redhead: No, and I guess that's part of the challenge we face in terms of what processes would be followed and where things get done. Again I would see that a lot of the technical work we would carry forward as a proposal would happen in the front end, that we would certainly have an opportunity to determine what the nature of our project would be and what the technical components of it would be. So where we've referenced the other acts, where we are involved with decisions under all those or where the environmental assessment component relates to those, we certainly would look to these being the new approach under the Environmental Assessment Act, to be sensitive to requirements under those other acts and perhaps some places where those would be resolved there.

Mr Hoy: All presenters have requested a definition of "interested persons" or they have difficulty knowing exactly what the government's speaking of here. What's the best way for everyone who has this concern to take part in that? How are we going to put the definition that those people are seeking or actually the one they get?

Mr Redhead: At the tail end of my comments I suggested there would be areas that are outstanding that we would be pleased to participate in. I think those are the kinds of things that can be taken to a workshop environment, and these can be done quite quickly, task force approaches to a specific question, and canvass those who are engaged. Our concern about it isn't that we might not capture in our view the right people, but maybe there are some thoughts within the committee or certainly within a government ministry that there are groups of folks one would want to make sure they capture whom

we might overlook. It's that type of thing we're talking about.

Part of the concern we have is that if we define that — what would happen in the front end of this process is that we would define who those people are for this project — we would like to make sure that we, for all people's interests, have defined that we have the right community to communicate with so that we don't overlook anybody and find out later in the game that we've overlooked somebody important.

The Chair: Thank you, Mr Redhead, for taking your time and preparing the presentation. This will be considered by the committee.

Do we have the Environmental Hazards Team present? I understand they ran into a hazard. They were probably running over or cycling over.

1530

COMMUNITY OPPOSING LANDFILL DEVELOPMENT

The Chair: I'm going to ask then the Community Opposing Landfill Development organization, COLD, to come forward.

Mr Dave Maris: Thank you. I'm Dave Maris and I'm the spokesperson for COLD; that's Community Opposing Landfill Development. It represents all the citizens of Fletcher and area. Fletcher is about 10 miles outside of town here. If you were to drive outside 10 miles, you'd run into an agricultural hamlet. Our concern that I'm dealing with today consists of about 100 affected households immediately and about 189 residents directly impacted.

Fletcher is an agricultural hamlet. Pioneer families exist in that region and have been there since the European settlers came to the area. Also, it's a hamlet of strong religious convictions, which is also close to the centre of our fight here, that dealing with a landfill. If you were to go to the church in Fletcher, the Fletcher United Church, and look right in the backyard, you'd look at the site where we're trying to prevent a landfill from being established, which borders right on the church property.

For the last two months, the residents of Fletcher have been facing off with ministry legal staff, with your lawyers presently, in a dispute. We are the first citizens' group in Ontario to win the right to go to the appeal board to argue ministerial decisions. That's your decisions, that's your lawyers that we've been facing off with for the last two months, and I can tell you right now that the residents of Fletcher are not happy. They are not impressed. When I saw this bill — we did quite a bit of research into this bill — the same arguments that we're facing right now with legal staff of the Ministry of Environment, that are being presented to us prior to the upcoming hearings, I saw the same verbiage, the same wording, the same provisions in this act when I read it over.

To understand why COLD is presenting this statement today, one must understand the history of the fight for environmental and social justice that the Fletcher community has undergone since 1972, when this site was wrongly put in that community.

This site that the proponent opened and now wants to reactivate first became known to the residents on a fall day when the people noticed a furniture truck going onto the property, the unloading of cardboard from the truck, and then the burning of the contents of the truck. This occurred because proper notification to the residents and to the township had not happened. Notice of an impending disaster that would plague the residents for the next 25 years had been placed by way of an ad, about one inch by one and a half inch, in a newspaper that carried only two subscriptions to area residents, and I do not think they could have been faulted for missing the notice on that warm June day.

The proponent had misled — some would say lied to — the Ministry of the Environment on several points. He misrepresented his property, the distance to residents' homes that are located too close to the landfills even for the criteria of that day. He lied on the surrounding watercourses, subsurface conditions, residents' water wells that are still being used today for living purposes, and other necessary and legal criteria on the application form.

Regardless of this list, he was still allowed to proceed. In fact, he was burning garbage in an open pit before the last bureaucratic decision was made to theoretically open the site. He had submitted an almost blank application form, a form that required the signature of the clerk of the township to show local knowledge of intention. There was a signature on that form, but the "clerk" who signed the form couldn't even figure out how to spell his own name right.

All of this happened without the residents' knowledge. The knowledge of the township was limited to being told that this site may be a possibility but to wait until the process starts until submitting their concerns to request that it not open.

The plans for the design, location, operation, site control and other important necessities that were to be attached with the application form did not arrive at the ministry until after he started dumping and well after the minister of that day, George Kerr, and staff determined that this would be a good site.

Prior also to the receipt of any of this information, a decision was made by the minister that a hearing for the area residents and the township would not be required to open this site. After all, during all this discussion, a local MPP of the day but not in that riding, Darcy McKeough, had sent along a letter stating that this was a good site, one in the geographic centre of Kent county. The problem with his observation is that Fletcher is in the midst of that dump and close to the western border of Kent. I raise these and subsequent points because in reading Bill 76, I say again, I see the same scenarios and same mistakes being allowed to proceed that have plagued these area residents for the last 25 years.

Our history and our fight have parallels with the growth of the Ministry of the Environment and we are proud of some of our actions and their subsequent effects that have made progressive change in environmental laws and decisions that benefit the environment, our land and water, individuals, their communities and, as we all believed, all of our futures.

This fight proceeded: never easy, most frustrating, and one that has robbed members of our community of justice and dignity, put their futures on hold, and has them feeling the loss of their family heritage. Again, families here are pioneer families of the area and this one plague in their midst could possibly wipe their future from the area. This they believe, and this they will fight for. They have vowed to go to the streets if they have to, because they cannot exchange pitiful dollars for heritage and rights.

I will explain this possible revolution in my presentation and show that this scenario may possibly happen here and in other areas of Ontario under changes to the Environmental Assessment Act as proposed. You have to understand that they did not first break the existing laws, but they truly believe the government has.

The people of the area fought and the site was closed in 1978, particularly because of its unsuitability for dumping and because no municipality thought it viable to use. At one point, a ministry official wrote "Closed" on the certificate. Then in 1985, when the garbage business became lucrative, the proponent attempted to reactivate the site. The township went to court requesting several issues to be determined by the courts, but the judge refused the case, as he only looked to see that the ministry of the day back in 1972 had determined that the site hearing would not be required, and that was good enough for him. An appeal was launched and the second judge stated that while there was reason to believe the first judge erred in his ruling, he didn't believe this case was significant enough to the people of Ontario to warrant being reheard.

The task to reopen or close the site went back before the ministry and the people in 1990. Since that time, the residents, through COLD and Tilbury East township, have been working through the environmental process to get a hearing. With the residents in this fight is support from all the municipalities in Kent county, five environmental organizations, church groups, area labour organizations, agricultural organizations, the Lower Thames Valley Conservation Authority and many others. No one or any organization has come out on side with the proposal in this fight. The local Ministry of the Environment office had also recommended against the use of the site because of its unsuitability.

The Ministry of the Environment in 1990 changed the certificate of approval to prevent any waste from being dumped at the site pending sufficient data collected to give evidence that this site would be a technically sound landfill. Deadlines were put in place for the delivery of this information. Deadlines came and passed with little or none of the information supplied about the site. Both the residents and the township offered to send in consulting groups to collect the required data but have been prevented access to the site by the proponent.

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As stated, COLD worked through the Ministry of Environment and Energy, following the process that was in place, to see that this site is closed. We did this knowing that if we were to go to court to carry on this fight we could possibly be thrown out for not having gone through the full route in the environmental process.

At one point in 1990 we thought we would have a fair hearing, only to learn on the second day of that hearing that the proponent and approvals branch of the ministry had cut a deal to proceed with the possible reopening of the site. This deal fell through once again, as the proponent did not fulfil his bargain to supply required information to the ministry.

Approvals branch and legal services were still operating under the prospect that this site could be engineered to their satisfaction; meanwhile, other branches, and politically the government, and all local parties in this fight knew technically and morally that it could not.

Since 1990, during this debate the public has had full participation in decisions that were made, both in the ministry and politically. Progressive changes were being made in environmental law. The Environmental Bill of Rights legislation was a beneficial act that we participated in both from knowledge and experience.

With the EBR in place, as we finished going through the process, the Ministry of Environment and Energy posted an amendment of site closure on the EBR registry early in 1995. We were pleased and could see the end to this just fight. Then, with the change in government, the nightmare recurred. First, nothing happened with the notice, then it disappeared from the registry. A few months passed as what we now understand as the "new directions" of the ministry were put in practice.

A new notice was placed on the registry, this time allowing the proponent the opportunity to reopen the site. We appealed to the Environmental Assessment Board, as is our right under the EBR legislation. We have set a precedent in Ontario by being granted the first appeal of the citizens of Ontario; this because, even though the first notice was backed by environmental law, the approvals branch, acting on what they believe is the new direction, disregarded what we had fought 23 years for. We learned, after affidavits were filed in this case, that a new deal was struck with the proponent in a conversation that was unknown to the residents. As of now, we do not have the details of that conversation, but we will when the parties have to reveal under oath to the appeal board.

In submitting their case to the board earlier this year, both the proponent and ministry lawyers have argued that the residents should have restricted knowledge of and, as they believe and have stated, no right to be involved in the decisions being made by the ministry. This is at the core of the legal argument being put forward by the present Minister of Environment and Energy and this government.

If we fail at the upcoming hearing or through the courts, then the residents will require an open and improved Environmental Assessment Act to protect both the environment and their community, let alone uphold the rights and dignity of Fletcher.

It is necessary to view these changes in the context of the other regressive changes happening in the Ministry of Environment and Energy. The arguments currently being made by this government through the MOEE are indicative of what is happening to our case specifically.

Reductions of ministry staff allow for error and lack of enforcement; changes and elimination of regulations provide for the shutting out of public needs and have

negative repercussions on the environment; loss of intervenor funding places roadblocks in gaining a fair and just hearing; cuts to recycling programs; cuts to conservation authorities; repealing the ban on incineration; changes implemented under the omnibus bill; and recent decisions such as those at the Taro site and at our site: This all adds up to the burning of Ontario environmental law that will continue if the Environmental Assessment and Consultation Improvement Act, Bill 76, is allowed to proceed.

I say this: After several public meetings, rural residents are recognizing via this example that your government has no regard for their rights, and when it is stated that Ontario is open for business, that now means they must vacate the premises. These residents have stated that business is the only sector with rights and the law will be dictated from Bay Street.

The whole approach of Bill 76 is wrong. It is not born from a respect of the environment or the people, and the curious aspect of the title must refer to the consultants and lawyers of corporate Ontario who were involved in the writing of this garbage.

I will say that there are residents and environmental organizations that are willing to rewrite an Environmental Assessment Act that streamlines the process and respects the rights of all. We have participated in the past and are always willing to do so.

Recognizing the fact that we were not consulted prior, I will put forward some of the recommended changes that I believe are necessary in this document. We believe that any bill concerning the EA act must also phase in private sector projects and regard cumulative effects and ecosystem concerns.

The following examples are not necessarily in section order of the bill but are in preference order to our example and with prejudice that our request is to scrap Bill 76.

Section 3.2, exemption declarations: empowers the minister to grant exemptions from the Environmental Assessment Act to a proponent or undertaking. There are no detailed exemption criteria included or the procedure that must be followed. It fails to state public notice and/or comment about exemptions that will be issued.

This cannot remain, as I see this will lead back to the abuse of power exhibited in 1972 when the decision was made by the MOEE, the minister, to allow the Fletcher site to open without the input of residents and their local government. The minister holds the responsibilities of office, and in doing so, such responsibilities must be known to the people through precise criteria and through responsibilities including full public consultation, project compliance and enforcement.

Section 6.1, public consultation: fails to properly notify the public fully and early on into the process. The duty to consult commences after the terms-of-reference phase and post-EA submission. It fails to define "consultation" and those to be listed as interested persons and/or parties.

This section must be scrapped as the public must have full and funded participation from the start. This can only lead to exclusive conversations and decisions. As in the Fletcher example of 1972 and 1995, the proponent and the minister exhibited abuse of power by not alerting the

residents and local government of the project first and then making what some see as illegal decisions by not following the prescribed process. Proponents and the MOEE must require full public consultation throughout the process, fully notify the public of impending projects and decisions and provide all relevant documentation concerning project and ministry rationale.

I should add that an important point is that we have a resident right here in this room who lives within 500 metres the site. The board is entertaining arguments from legal staff that that interested person, as we see it, is not an interested person and has no right — no right — to be involved in this decision. That's what we're facing right now.

Section 7, government review: fails to require the minister to provide written reasons for an EA rejection and/or finding that an EA is deficient. This section does not describe the mandate of a government review team. The 45-day comment period is insufficient.

Recognizing the cutbacks to staff and ministry, there lies the problem to provide comment on projects. Perhaps in 1972 on Fletcher, the Ministry of Agriculture or Municipal Affairs or Natural Resources would have stopped this project. Even the MOE did not visit the listed site in 1972 prior to a decision being made to open. It was only after the issuance of the certificate that they realized the residents' homes were too close and their water wells were much closer than their homes and that the largest watercourse in the area happened to border the site, as well as one that crossed right through the site, I should state. It should also be stated that periodically this watercourse happens to flood the entire area, let alone the site itself. The conservation authority could have told the MOE, had they even bothered to ask. The minister must be able to reject deficient EAs, with written reasons for the public.

1550

Section 8, mediation: fails to provide for proper alternative dispute resolution and for the funding to interested parties.

Recognizing that there is no way for mediation on the Fletcher model, except for site closure, I realize that there are some projects that communities would like to see proceed, but only after their concerns have been properly addressed.

Sections 3.1, 11.1, 11.2, harmonization and minister's decisions on EA applications: empowers the minister to vary or dispense with any requirement of the EA act and can grant exemptions under the guise of harmonization; fails to impose public comment and notification, as well as requirement for written reasons; empowers the minister to defer matters and/or refer to any tribunal or "entity."

Scrap these sections as ambiguous elements can only lead to abuse of power. Again, we believe in full public participation and the minister must carry responsibilities and accountability. Decisions concerning Fletcher will be made hopefully by the Environmental Appeal Board. This tribunal carries an independence from those in the MOEE who do not or cannot or will not do the right thing. I would not want to see such tribunal independence lost to us or any other community, or to an "entity", whatever "entity" means.

Sections 6, 6.1 and subsection 6.2(2), terms of reference: fails to allow public access from the start of the project. The minister is empowered to approve deficient terms of reference.

This again raises the spectre of 1972 when the Fletcher proponent was required to submit information prior to the issuance of a certificate of approval. The submitted information consisted of one-word answers to who, where and what, and some of that information was false. Again, the decision to proceed was granted prior to the receipt of required documents. These documents were incomplete, even to the standards of the day, and included false information.

This is most important because the present government is still making decisions and barring public input based on that past incorrect information. We are going back presently to 1972 standing before legal staff today. This demonstrates the willingness of this government to allow proponents carte blanche on future projects in Ontario.

I would also reference the dictatorial decision made recently concerning the Taro site. Immediate residents, the public at large and local governments also have front-line concerns that must be respected in any environmental assessment.

Section 5, compliance, effects and effective monitoring: fails to provide the minister the ability to issue compliance orders against proponents that contravene EA approvals.

Presently, using the Fletcher model, I realize that there are proponents in Ontario who do not respect orders of compliance and monitoring. This drafted section of Bill 76 must be rewritten, as the sceptical side of me can only believe that this was done to carry forward the lack of respect that some have for the environment and the public. This section is ominous for Ontario. This section may prejudice a minister's or approvals branch decision as it would disallow pre-approval site alteration. The proponent in our example argues that he has spent a few hundred thousand dollars and he cannot turn back. Presently, some in the MOEE have not rejected this foolish claim and seem willing to believe this. Experts scoff at this allegation. The truth may rest closer to one hundredth of that amount, that unknown figure, as he does not have to reveal if he's even spent a cent.

Subsections 9(3) through 9(5) and 9(7) and sections 11.3 and 27.1, environmental board hearings: empowers the minister to deny reasonable hearing requests from the public; also empowers constraint, the limiting of scope, and allows for the issuance of policy guidelines on the board; allows for the variance and/or reversal of a board decision or decisions; empowers the minister to reconsider and/or amend and/or revoke a board decision.

I will conclude with this Orwellian aspect of Bill 76. There is nothing just that can come from this type of legislation drafted in such a fashion. The residents of Fletcher, as well as the people of Ontario, have built environmental law that carries a respect for all in and of the environment. Such law, policies, regulations, boards, agencies, directives etc were born from the recognition of holistic problems and the need to address them. These were built to be progressive, to ensure respect and to act independently of the whole, if required, to necessitate

justice. When law such as this is brought forward that carries the possibility of contraventions of these principles and/or disregard of rights, then with it will be loss of respect for those who can enact such law.

I can say this based on the depth of personal experience, gained partially from the Fletcher residents and their 25-year-old battle and from wider participation in environmental struggles. It comes from being with those who cry after once again they are robbed of justice because those of power or those who carry influence have the tools they requested. I have been with them when they have asked me aside in order to say that they must leave their heritage or lose a door-to-door friendship of theirs of 60 years due to this plague in their midst. I can believe them when they say they will go to the streets to prevent this site from opening, as may others. For them, the Environmental Assessment Board cannot be lost. For them, the original intent of this EA act cannot be lost.

Bill 76 carries nothing that can provide justice for these residents and their environment. Those who drafted Bill 76 have long ago been lost and away from the environment.

Mr Galt: I'll respond. Just a little bit of clarification: There is public involvement early in the process. It will go on the Environmental Bill of Rights registry. Part of developing the terms of reference is about being involved with public process.

I questioned, as you walked through this, the concerns that you have. I'm confused whether you're really concerned about living next door to a landfill site and its appearance and the fact that's not the best address to have, or if it's a pollution concern you're expressing to us that you've experienced over the 25 years.

Mr Maris: This is both a pollution concern and the right of residents not to have a dump right — and I mean right — bordering their site that doesn't meet the minimum criteria.

I've got to say about public involvement that it was us who had an order to close that site on the EBR registry. You're the parliamentary assistant. Your legal staff, your approvals branch, threw that order away. We had fought 23 years for that order. You threw it away as if it did not even exist and you posted your order on there which allows them to proceed. I don't want to hear that the EBR registry is protected and enshrined in this bill. It's not there because your actions have thrown it away.

As I want to state again, you tell the resident back here who lives 500 metres from that site that your legal staff today are arguing that he has no right to make an argument before the Environmental Appeal Board, that he is not an interested party. I see it in the act, I see contraventions in the act, and I see and I listen to your lawyers today say that we don't have the right to argue our case.

The Chair: We'll have to move along. I'm sorry, we're running out of time.

1600

Mr Hoy: Thank you for your presentation. You've gone through a lot of history here that I think can prove to other members that we have to be mindful of protecting those interested persons, the need perhaps for intervenor funding. I think you're citing instances in the

bill where you have concerns that you've experienced. So they have a firsthand look at the long history of the Fletcher landfill site. The bill also, I believe, questions whether a community has to be a host community, and clearly the Fletcher people don't want to be a host community for a landfill. Since this struggle has taken so much time and many years in fact, I wonder if you'd care to comment briefly, since we have so little time, about intervenor funding and what it could have done or not done for you.

Mr Maris: I heard the argument this morning that because X number of dollars have been spent on intervenor funding, therefore it was a waste and it should not be made available and it was struck down. The people of Fletcher have never brought forward a frivolous or vexatious argument, and we have always done so on our own resources.

As I stated, 189 residents are directly impacted, and I recognize today that some of those residents have limited resources. There was a time when Kent county and Tilbury township had money to expend on this fight. That is not here today. They do not have the money. So basically, whereas before we could work in partnership with municipalities, now we are carrying the ball for the residents immediately impacted and for the county and for Tilbury township. The money is gone.

Meanwhile the other side, which stands to gain hundreds of millions of dollars based on the size of this site, on that gamble can spend or have the possibility of entertaining and recovering vast amounts of money and can bury us with consultants and lawyers. That hasn't happened yet, but that is a possibility. Twenty-five years these people have been requested to come forward and carry on this fight with the moneys they collect or from their own personal lives. Twenty-five years their lives have been set aside, some of them; some have left. For a fair and just and open hearing, they have to have intervenor funding.

The Chair: Your last question, Ms Churley.

Ms Churley: I was quite surprised at the question from the government parliamentary assistant because my impression of the story you told today, albeit at times quite angrily, is that your community has gone through a tremendously horrendous time over this process, and I don't think that we could blame any community for being upset and angry about this.

My sense of what you were talking about here today was not getting due process, that the process was abused terribly. I haven't met anybody yet who wanted a dump in their backyard, but the bottom line is, at least if there's going to be a dump in your backyard, you want a fair, aboveboard, fully participatory process where you feel empowered and, whatever happens, you feel at the end of the day all of your environmental and other concerns are on the table. That's what I got from what you were saying, and that your fear is that this legislation is actually going to make things worse on top of the problems that already existed under the other act. Is that not what you were trying to tell us today?

Mr Maris: Yes. To start with, you have to understand our anger. Twenty-three years we had the order. We could have been arguing today the conditions, how we

want that site closed in respect to the area. We don't have that luxury today. We are back at square one after 23 years. So yes, the residents are angry.

I can say that at the start of this argument 25 years ago perhaps the people came forward with concerns that were not about the environment. Over 25 years they have educated themselves about the effects of this on the environment and others, so they're beyond and they want a fair process. We went through the fair process, and as I stated, it was most frustrating. We went through it, recognizing the fact that the courts threw out Tilbury township on what we see as a wrong ruling. We didn't want to have to go back to the courts and have it be lost to the courts, so we went through the whole process, most frustrating but always progressing, because what we do is right. But we're asking for a fair hearing.

We're facing those arguments today from the ministry lawyers that are in this legislation and how they want to interpret it. As soon as I saw this bill, they all popped out. I could set it right down beside the legal submissions of MOE staff today on our case and see word for word copied, paragraphs copied. This is what they want to go forward. So yes, anybody can sit here and tell me, "The intent of the bill is this." "The intent of the bill is that," but it's the actions that are being implemented on the people of Fletcher and the area residents today that show the true intent of this legislation.

The Chair: Mr Maris, thank you very much for presenting that particular case. Hopefully, this can be resolved and the community will be involved as appropriate.

Mr McGuinty: Mr Chair, I notice that again this afternoon we have had one presenter unable to attend and we have another on standby, if you will, prepared to make a presentation. They're seeking 15 minutes. Todd Pepper is the general manager of the Essex-Windsor Solid Waste Authority. He's here now and I'm looking for all-party consent.

The Chair: Do we have all-party agreement to this? We do. Thank you.

ESSEX-WINDSOR SOLID WASTE AUTHORITY

The Chair: Mr Pepper, you have a 15-minute period, and whatever time you don't use, we will share that between the parties for questions.

Mr Todd Pepper: Mr Chairman, members of the committee, thank you for hearing me today on short notice. As Mr McGuinty said, I'm the general manager of the Essex-Windsor Solid Waste Authority. We have the benefit of being only the second community in the province of Ontario to obtain an approval for a landfill site under the environmental assessment process and, unlike our predecessor, Halton, we actually were able to complete that process without a hearing under the act, mostly because of the public consultation process that Essex-Windsor completed and carried out over the 11 years our process took.

Just some brief facts. During that period of time Essex-Windsor spent \$11 million of local taxpayer money and \$3 million of provincial money in order to complete that process, and as I say, was only the second proponent to

actually get through the current provisions of the EA. I'm going to make a radical suggestion to you today, one that you have not heard up to this point, and that is that the Environmental Assessment Act does not need to be amended, it needs to be eliminated. The act, contrary to its original intentions and certainly the wording of Bill 76, does not protect the environment. That is what the Environmental Protection Act is for.

I think if we're really going to talk, the environmental assessment process is nothing but a planning process, not an environmental protection process, and as such — and I'd like to note for the committee that my comments are strictly related to the landfill side of the EA process; I understand there are many other undertakings regulated by the process, but my experience is solely on the landfill side — landfill siting is, as Mr Turkstra referred to earlier this morning, a land use issue and we have a well-defined land planning policy procedure and act in this province that can very easily be applied to the siting of a landfill site and the approval of a landfill site. However, given that that's a rather radical suggestion that may not seek favour throughout the province, I would like to give you some specific comments on three sections of the amendment as proposed and before you today.

Section 6.1, while enshrining public consultation, does not define the consultation. Essex-Windsor, while not required by the current legislation to carry out any public consultation, has held, over those 11 years, over 50 public meetings. We have published newsletters, we have had what we call kitchen table meetings. We would literally show up with myself, my consultants, our lawyers in somebody's kitchen and meet with them to hear their concerns, to get their involvement in the process, to understand what their concerns are and try to resolve them sitting right at their kitchen table. That's not legislated; that's done. As you heard from Laidlaw, any proponent who proposes to get anything approved in this province must go through that process, whether it's legislated or not.

1610

What I'm suggesting to you is that although it's fine to enshrine public consultation, it must be defined. I recall about five years ago, which was well into the process, the chairman of one of the local public advisory committees, called the MAD group, Maidstone Against Dumping, saying to me: "How many times are you going to come and ask my opinion on putting a landfill site in my backyard? I've told you 20 times at 20 public meetings we don't want it. How many times are you going to ask?" We had to be apologetic and come back and say: "We're sorry. This is what the process requires us to do. We have to come back and ask you one more time to fill out this form or give us your opinion."

So define what types of public consultation you're looking for. When you sit down at the end of this process and you look at section 6.1, I ask you to ask yourselves the question, "Who, how often, and at what stages should public consultation take place?" And make it clear — I understand not in the act but in the regulations that hopefully will follow shortly thereafter — that public consultation is defined.

Subsection 6.2(2) still requires the review of alternatives to the undertaking. This requirement was fine in the

late 1970s or perhaps even the early 1980s. However, we now have mandatory recycling regulations in this province. It is not a matter of looking at recycling as an alternative; it is mandatory. We have mandatory requirements for yard and leaf waste management. We have mandatory requirements for backyard composting. It's no longer necessary to look at these as alternatives to the undertaking; they are required by provincial legislation and regulation.

The process of reviewing alternatives also sets up a differential between the private sector and the public sector in the environmental assessment process. Myself in the public sector, the majority of the time that we spent in this 11-year process is looking at alternatives to the undertaking. One of the most controversial components of that, of course, is the site search process. The public sector must, through the process, find the best site possible anywhere in the jurisdiction; in our case, all of Essex and Windsor. If you're familiar with the county of Essex, it takes you approximately an hour to drive from one end to the other. That's a very large physical area in which to investigate, and of course you can imagine the cost in carrying out that investigation.

The private sector does not have to do that. The private sector is allowed to acquire land right at the beginning of the process. The public sector cannot do that. While Essex-Windsor received its environmental assessment approval on August 10, 1995, it isn't until this very day, while I'm sitting here, that my staff is finally getting a shovel in the ground to start construction of the regional landfill site, because of the delay in the process that we must go through, after approval of the undertaking, to then acquire land.

My final suggestions or comments are on section 9 of Bill 76. I suggest to you that there is a conflict between the wordings in subsections (3), (4) and (7) of the act, which I would ask you to please consider during your learned debate after the hearing process.

In subsection (3), the minister can scope a hearing and direct the board to consider only specific matters. However, under subsection (4), the board is not precluded from hearing argument on any issue related to the applicant, even though the minister has ostensibly given them direction to scope a hearing.

What's even worse is that when we get to subsection (7), the board can then make decisions on matters even though testimony has not been heard at a hearing. It would seem to me that this gives the board exceptional discretionary power and could permit the board or an individual member on the board to impose or reflect their own ideas, their own prejudices, their own opinions on this very lengthy and well-studied environmental assessment process, perhaps even contrary to expert opinion that's been submitted on a witness stand.

Those are my brief comments. Again, I appreciate the opportunity. In discussion with the clerk, I will provide my comments in writing after I have an opportunity to look at the bill in more detail.

The Chair: Thank you. We'd be happy to receive your comments in writing. We have just two minutes for each party. We'll begin with the Liberal Party.

Mr McGuinty: Thank you very much for your presentation, Mr Pepper. I was glad you were able to have a chance to present.

There's been quite a bit of discussion today about the absence of a definition for those persons as may be interested. I wonder if you could, right here and now, take a stab at that.

Mr Pepper: Right here, right now. I think it's easy to define. Certainly there is the host municipality. That's critical, and it's suggested throughout the proposed act that the clerk of the local municipality must be notified.

We have used a policy reflecting 500 metres from the proposed location of the landfill site. From our perspective, that seemed to define those who had specific interests that might affect their property, that might affect their quality of life, that affect their immediate neighbourhood.

Generally, and certainly in our case, there are well-defined public-interest groups. You've heard from Mr Coronado today, from the coalition. That is a well-known, defined group. What was interesting in our process, during the intervenor funding process, is we actually had a group come forward that none of us had ever heard of who were provided funding under the intervenor funding act, received their money, and we never heard from them again. We don't know who they are or what they did with the money. So I think interested persons can be well defined within those terms.

The Chair: Just in time, Ms Churley.

Ms Churley: I apologize for missing part of your presentation. I had to make a telephone call. I didn't hear all of your presentation but I certainly heard a very controversial statement before I left that you would start a revolution, I think — you didn't use those words — and get rid of the process. I think you mean particularly relating to landfill and other waste facilities, is that right?

Mr Pepper: That's correct. I defined it right at the beginning as applying simply to the landfill siting process.

Ms Churley: I'm sorry if I'm redundant. I'm sure you spoke to this, but you would see another process in its place that would cover all of the environmental considerations so that at the end of the day you have the best environmentally sound project possible?

Mr Pepper: Yes. I believe those are best covered under the Environmental Protection Act. That is the legislation designed, by its very name, to protect the environment. I've had a chance to look at the draft regulations that the ministry has published in relation to landfill design siting criteria and I think they are more than capable of meeting the environmental concerns of a landfill in your backyard.

Ms Churley: I mentioned, in asking a question earlier, looking at alternatives to the site and alternatives to the undertaking, which in my view is very important when you're looking at, say, incineration and looking at recycling and reduction, that issue, that you have to look

at the holistic and cumulative effects of all of those things. How would you deal with that under your proposal?

Mr Pepper: I mentioned that during my brief. What I've suggested is that when the EA was first drafted and put into place, we did not have the regulations that required alternatives to the undertaking. What I mentioned is that today we have very defined regulations requiring recycling, requiring composting, management of yard and leaf waste, and in fact requiring us to meet a 50% waste diversion objective by the year 2000. By the way, Essex-Windsor has achieved a 43% diversion rate as of the end of 1995.

Ms Churley: Congratulations.

The Chair: The final question of this session this afternoon, Mr Stewart.

Mr Stewart: You have made the comment that public consultation should be laid out very explicitly during this process. We're hearing today that public consultation should be starting from point zero all the way through. I appreciate what you're saying, because over the past eight or 10 years the criteria have been changed every couple of years. You'd start all over again and it just got a different group of people mad.

Mr Pepper: Yes.

Mr Stewart: Tell me in your opinion what you think and how much public consultation should be included in this act.

Mr Pepper: I agree wholeheartedly that you need public consultation right at the beginning and that this should lead to defined terms of reference which are essentially signed off at that point by the parties.

You're quite right. We went through five municipal elections, three provincial elections, with actually three different governments in power, three mayors, nine wardens, six EA review officers. When you consider the length of time and the changes that took place during that time, it's critical that public consultation be there right at the beginning, that the terms of reference are defined with their assistance.

The public knows what the concerns are today. When the EA started in 1980, this whole environmental issue was new to all of us, but we've all had 15 years of public education and attunement, if you will, to what's going on in the environmental process, and I think it's time to move beyond that.

The Chair: Thank you kindly, Mr Pepper, for your presentation. We would welcome anything in writing that you would care to submit.

Ladies and gentlemen of the committee, tomorrow morning we will be resuming at 10 am with opening statements at committee room 1 of the Legislative Building.

Is there any other business? There not being any other business, we will adjourn for this afternoon and resume tomorrow morning at 10.

The committee adjourned at 1622.

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Mr Pat Hoy (Essex-Kent L) for Mr Gerretsen

Mr Doug Galt (Northumberland PC) for Mrs Johns

Mr Marcel Beaubien (Lambton PC) for Mr Jordan

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Ms Marilyn Churley (Riverdale ND) for Mr Wildman

Clerk / Greffière: Ms Lynn Mellor

Staff / Personnel: Mr Ted Glenn, research officer, Legislative Research Service

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Mercredi 7 août 1996

Standing committee on social development

Comité permanent des affaires sociales

Environmental Assessment
and Consultation
Improvement Act, 1996

Loi de 1996 améliorant le processus
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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
SOCIAL DEVELOPMENTCOMITÉ PERMANENT DES
AFFAIRES SOCIALES

Wednesday 7 August 1996

Mercredi 7 août 1996

*The committee met at 1000 in committee room 1.*ENVIRONMENTAL ASSESSMENT
AND CONSULTATION
IMPROVEMENT ACT, 1996LOI DE 1996 AMÉLIORANT LE PROCESSUS
D'ÉVALUATION ENVIRONNEMENTALE
ET DE CONSULTATION PUBLIQUE

Consideration of Bill 76, An Act to improve environmental protection, increase accountability and enshrine public consultation in the Environmental Assessment Act / Projet de loi 76, Loi visant à améliorer la protection de l'environnement, à accroître l'obligation de rendre des comptes et à intégrer la consultation publique à la Loi sur les évaluations environnementales.

The Chair (Mr Richard Patten): Ladies and gentlemen, welcome to the second day of hearings on Bill 76. I'd like to welcome back the committee members who travelled from Chatham yesterday, and I'd like to welcome the minister here this morning. We'll be anxious to hear, I'm sure, her comments. We will proceed on the basis of 20 minutes for the minister's opening statement, 20 minutes from the critic of the official opposition, Mr McGuinty, and 20 minutes for the environmental critic from the NDP, Ms Marilyn Churley.

MINISTER OF ENVIRONMENT AND ENERGY

Hon Brenda Elliott (Minister of Environment and Energy): Good morning, everyone. It's an honour to join you here in these standing committee hearings on environmental assessment reform in Ontario. By participating in these hearings, you are helping us shape an improved environmental assessment system, a system that contributes to the protection and sound management of the environment. Together we'll be looking at environmental assessment that was first established by a Progressive Conservative government under Bill Davis in 1975.

Ontario's Environmental Assessment Act was one of the first pieces of environmental legislation in Canada and it has in many ways served us very well over the years. But much has changed in the last 20 years since the proclamation of the Environmental Assessment Act. We are now looking at ways to reform it to ensure it meets our needs in 1996 and into the next century.

The Ontario government is committed to meeting the need for a clean environment in three ways: the establishment of high standards for environmental protection; the efficient enforcement of those standards; tough penalties for polluters.

We see environmental assessment as an important part of our protection plan.

Environmental assessment is proactive and inclusive. It helps us look before we leap, to integrate environmental factors up front in decision-making. People have learned the hard way that preventing pollution is less costly than cleaning it up.

During these hearings we will consider a series of reforms aimed at modernizing environmental assessment in Ontario. Behind us we have 20 years of invaluable experience. We have begun to understand what works and what doesn't, and we are acting on that knowledge. We have the added benefit of the experience of other provinces and the federal government with their recent environmental assessment legislation to draw upon.

This legislation will benefit the people of Ontario by maintaining the key features of the Environmental Assessment Act; broadening the definition of "environment," including social, economic and biophysical features; expanding the full range of environmental analysis, including the consideration of alternatives and mitigation; and ensuring the continued role of the Environmental Assessment Board as an independent decision-maker.

We're also introducing a number of EA firsts that will modernize that process to meet present and future needs.

For the first time in Ontario's history the public will have guaranteed access to the process from the earliest stages.

For the first time in Ontario's history there will be early and clear direction on the kind of information to be included in environmental assessment documents.

For the first time in Ontario's history there will be strict time frames imposed up front for all the key steps in the decision-making process.

For the first time in Ontario's history mediation will be available to solve conflicts in a timelier and less costly manner.

For the first time the minister will have the ability to reject an incomplete assessment early in the process.

For the first time there will be provisions to harmonize with the federal environmental assessment process. Our goal is one project, one process. This says no to duplication, no to overlap and yes to cutting red tape.

For the first time the role of class EAs will be made clear in the legislation.

And for the first time the Minister of Environment and Energy will have the power to focus Environmental Assessment Board hearings on outstanding contentious issues. Hearings will not be forced to go back to square one and cover all the issues all over again.

With these firsts, we are capitalizing on 20 years of environmental assessment experience and updating the act to make it less costly, more timely and more effective.

A full environmental assessment will still be required and the focus will be on the environmental impact of a project, not on the process. The public's right to a say in the process will be enshrined in the legislation, and new approaches to compensation and mediation offer an opportunity to move the culture of waste approvals from one of confrontation and stalemate to one of accommodation.

These EA reforms complement work we've already done to put an end to the era of costly and unmanageable waste approvals.

Today we'll be hearing from a variety of people and groups with valuable perspectives on environmental assessment. We'll be joined by community leaders, proponents, technical experts, professional and environmental organizations, and others who have had a great deal of first-hand experience with the environmental assessment process. Many interests are represented here today and I'm certain we'll have a variety of viewpoints on the improvements outlined in the bill.

The overriding interest in reforming environmental assessment is to come up with a more workable system that provides strong environmental protection.

I can say to you that I look forward to the ideas presented during these hearings.

Improving the environment is the responsibility we all share and you can be assured we will give our serious consideration to all the constructive ideas tabled with the committee.

I recognize that some who come before you will say we are not going far enough with our reforms. Others will say to you that we have gone too far. We should not be surprised by the variance in these viewpoints.

As legislators, we need to recognize the strength and progress this bill represents and be receptive to further improvements. I want to assure the people and you that, as minister responsible for this legislation, I have listened and will continue to listen to constructive suggestions.

By making the process more accessible to ordinary citizens, we have the opportunity to move away from the adversarial approach that has dominated environmental assessment cases.

One issue that has come up is whether or not we've provided enough local responsibility for waste.

We recognize that local governments are in a unique position because they are closest to the issues, as well as to the local taxpayers and residents.

When we established the first-time strict emission guidelines for incinerators and lifted the ban on incineration, we gave municipalities another option for determining the kind of environmentally sound waste management system that suits their needs best. But we must remember that some waste issues can be locally contentious, as people have to live with these decisions for many years. This involves detailed technical review.

The ministry has an important role in setting environmentally protective standards and ensuring these are met through approvals.

Technical review, with the potential for public hearings, is involved, and this kind of technical validation ensures that people who must live with the projects have confidence that the local environment is protected.

Also at issue is a need for greater certainty in the process, and this is one of the goals of our reform. We want to see that good projects get a faster yes and bad ones get a faster no. The reforms allow us to do this by ensuring that ordinary people have the opportunity to get involved early in the process and influence the decisions. More on this a little bit later.

The solutions before you that we've come up with have been developed through extensive consultation. This is a process that was under way before the current government took office.

Previous governments did recognize the need to reform the environmental assessment process and they did act. In fact, several of the reforms we're proposing stem from the work already done. This project was started by the Liberal government in 1988 with some of the same goals we're now pursuing.

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The EAIIP task force released a report in 1990 that led to a 90-day public consultation process conducted by the Environmental Assessment Advisory Committee. During that consultation, more than 180 written and oral submissions were received.

EACC recommended both legislative and administrative changes, and in 1993 the NDP government chose to proceed with the administrative reforms.

I am not underestimating the importance of administrative reform. I think everyone would agree, for instance, that the average government review time for environmental assessments has dropped from 17½ months to about seven months, and that certainly is a step in the right direction.

The problem with administrative change, though, is that it can only go so far. It's like trying to fix a flat tire with a Band-Aid. To modernize the process you need to get inside the legislation.

Our reforms are consistent with the kinds of recommendations that were put forward by the Environmental Assessment Advisory Committee. We're not reinventing the wheel with these reforms.

Let's look at some of the reasons why we believe this reform is so necessary. Consider, for instance, the stories of a few examples where the system has gone off the rails:

In my riding, the Guelph-Wellington waste management plan has taken 12 years, cost \$4 million and there is no solution. The process has been abandoned.

The Peterborough and Kingston waste management plans have yet to be decided upon, although they have taken 10 and 12 years respectively.

The timber management class EA did reach a decision, but it spent four and a half years trying to do so and it cost \$20 million in the process of doing so.

The worst, though, the Ontario Waste Management Corp, charged with finding hazardous waste solutions, took 15 years and \$145 million only to have its environmental assessment rejected near the end.

The problem with the environmental assessment process arises largely from its lack of clarity. It sets only a broad framework without giving clear and detailed direction. Over the last 20 years the process has evolved in ways that create process for the sake of process.

without tangible environmental benefits. The Environmental Assessment Act does not specify, for example, how many alternatives must be considered. Public sector proponents end up doing more work than necessary to cover each and every requirement that might be placed on them. As a society, we can't afford any more encyclopaedic approaches. There is also no requirement for public involvement early in the process.

The result of this is a process and a system that have come to value process more than results. The point here is not that process doesn't matter — certainly it does — but it should never be the dominant feature of environmental assessment. We have to not lose sight of environmental mitigation and its impacts.

We must not lose sight of the fact that peoples' lives are affected by the environmental assessment process. If the process works as it should by giving quick approval to environmentally good projects, communities and individuals benefit. When the process becomes bogged down, communities suffer. Environmental assessments can become protracted, draining resources and, worst of all, dividing communities, putting people's lives on hold.

This is not what we want to see in environmental assessment. Let's remember that many projects have environmental benefits for their communities, keeping communities safe, healthy and clean. That's what these reforms are all about: providing the best environmental protection we can.

In greater detail, let's talk about some of the reforms we're proposing and how they will help get the system back on track.

As I said earlier, for the first time in Ontario's history the public will have guaranteed access to the process from the earliest stages. Earlier public input means earlier identification of contentious issues and fewer surprises late in the process. For the first time proponents will be required to consult with the public in preparation of environmental assessments. The public will have access to independent mediation at any point in the process where contentious issues arise. We're formalizing a concurrent public and technical agency review at the formal process review stage. This ensures for the first time that the public's input is factored into formal decision-making.

Terms of reference set out the kinds of information and the level of detail required by agencies to make a decision on the environmental assessment. We will focus on key environmental issues and seek involvement from all relevant parties and stakeholders. We will use the term of reference for decisions at later stages in the progress of environmental assessments.

With regard to time lines, we will also provide greater certainty by establishing binding time lines for the various stages of environmental assessment. This will be especially good news to the communities, the municipal councils and the businesses affected by environmental assessments. At the same time, we will allow flexibility for the proponents to make sure they have a chance to get it right.

This brings me to the scope of hearings. Unfortunately, the Environmental Assessment Board must all too often deal with non-contentious issues or peripheral topics that

don't contribute to environmental protection. We shouldn't be holding hearings on non-contentious issues. Hearings are useful for important environmental issues, and an independent arbiter is needed. We've preserved this role for the board. Still, issues that come before the board must be focused.

Everyone here recognizes the need for a modernized environmental assessment process that meets our needs today and in the future. The reforms we are discussing today will make the system more accessible and workable. In doing so, we'll enable the Environmental Assessment Act to fulfil its purpose, which is the wise use and management of the environment.

Environmental protection is the top priority for the Ministry of Environment and Energy. We are committed to ensuring that our communities are as safe and clean as possible and that they remain good places in which to grow, live and work. I believe that our environmental assessment reforms before you today will help us achieve these goals.

I want to thank each of you for joining us to discuss these reforms and taking the time to go through this material. Your commitment to the process will help us develop a workable system based on the highest standards of environmental protection.

Mr Dalton McGuinty (Ottawa South): I propose to mix my 20 minutes in the sense that I'll be making some comments and at the same time asking questions of the minister.

At the outset, let me commend the minister and her government for making an effort to reform the environmental assessment process in the province. I don't think there's any doubt that there has been some considerable legitimate criticisms levelled against the legislation and the fact that it produces hearings that have been too costly, too long and too unpredictable in terms of their outcome.

Having said that, as is my obligation, I intend to point out some of the shortcomings of the bill. Let me say as well that it's my conclusion that Bill 76 is not stillborn. There are defects. Those can be cured through amendments. We intend to put forward amendments, but let me address some of the particular concerns I have.

Let me begin by talking about the title. You've got to hand it to the wordsmiths today. Those are the folks who select the right words and then string them together in the right sequence. As somebody once said, you can lend the appearance of solidity to wind. This title says, "An Act to improve environmental protection, increase accountability and enshrine public consultation in the Environmental Assessment Act." Who the devil could be against that? It might have gone on to say "and to compel Ontarians to love their mothers, enjoy apple pie and refrain from kicking dogs."

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But let's look at the contents of the bill to see if it lives up to the billing claimed in the title. And I'm surprised that there's no reference in the title to efficiency and streamlining. That's one of the objectives, surely, of any reform of environmental assessment legislation in the province.

You talk, and there has been much talk in the past both by yourself and the Premier, of a need to ensure that we continue to have full environmental assessments, and you made reference to that again today. You said a full environmental assessment will still be required. I want to outline for you why I feel that Bill 76 is not going to allow or is not going to ensure that there's going to be a full environmental assessment.

There are a number of provisions in the bill that empower you to dispense with essential EA requirements and that are going to allow proponents to avoid doing a full environmental assessment. By a full environmental assessment I mean consideration, if we take a look at the landfill context, of all the things like the importance of examining the three Rs or other alternatives to landfill; the requirement that we examine alternative sites that may be hydrogeologically superior to the site preferred by the proponent; the requirement that we examine alternative landfill designs; and the requirement, at present, that the proponent address the full range of biophysical, socioeconomic or cultural impacts caused directly or indirectly by landfills.

They're not going to have to do that under existing legislation under the proposal, under Bill 76, and that's because you have been given discretionary authority in the bill to exempt a proponent from having to meet those requirements.

I just want to remind the minister of some of the statements made by the Premier when he was leader of the third party. He made these statements in the House when raising questions with the Premier of the day or the Minister of the Environment of the day. One question asked June 27, 1991, was, "Why did the minister dismiss the Kirkland Lake proposal out of hand, without examining the merits and without permitting a full environmental assessment on that proposal?" Mike Harris, leader of the third party.

Again, October 15, 1992, Mike Harris: "You did not live up to your commitment that any new landfill sites would be 'subject to the fullest kind of environmental assessment.'"

Mike Harris, October 15, 1992, again: "I will commit that there will be a full environmental assessment, that all alternatives must be considered."

Then when he was Premier, in the House on October 23, 1995, I asked a very simple question of the Premier: "My question, Premier: Do you still, today, believe that Ontario's dumps ought to be the subject of full and public hearings under the Environmental Assessment Act?" His response: "Yes, I do."

In spite of the fact that we felt the previous government was proceeding in error with their mega-dump proposal, at least they were having full environmental assessment, not trying to short-circuit the process, not going without any full environmental assessment.

My question is, if you are genuinely intent on ensuring that there be full environmental assessments for proponents for landfills or other undertakings, why have we found within the bill a number of sections that allow you to approve EA terms of reference which do not require proponents to examine alternatives to the undertaking, alternative methods of carrying out the undertaking, or

the full range of biophysical or socioeconomic impacts associated with the undertaking?

Hon Mrs Elliott: There are a number of different parts here. The first one, with regard to the empowerment to dispense, for instance, there always has been an element of the environmental assessments that allowed exemptions to occur. I just looked at my notes here, and the average number of exemption orders granted annually has been something in the order of 27. We decided that there may be from time to time reasons to have that exemption still in there. But I certainly agree with you that it's important, and have in this maintained the broad definition of "environment." We have all of the projects subject to the full Environmental Assessment Act.

You have to also keep in mind that we now have for the first time in the province standardized landfill regulations. We have a compensation committee just about to go out throughout the province to help us with some kind of guidelines for compensation as well. So there are a number of things coming to bear in this as well which I think will help the citizens feel they are having the best input and we are looking at all of the aspects of the protection of the environment with regard to a landfill.

The ability for an environmental assessment to go before a hearing has always been discretionary, and that is as opposed to mandatory. Again, we are still allowing the environmental assessments to be subject to hearings. They will continue to be discretionary. It's not uncommon for environmental assessments to be accepted without hearings, particularly of course the class EAs, and 90% of the environmental assessments are class EAs.

We believe that in the case of contentious issues it's important that we be able to scope them before the board, that that arbitrator, that final voice, is there to provide a second opinion. The opinion of the board is binding, but it can be scoped. That will prevent us from getting into situations where, for instance, with the timber EA one I think the hearing process was almost four years. Our objective here is to provide the best environmental protection that we can by having a sensible and by having a timely, as you said yourself, and predictable process.

Mr McGuinty: I know there is provision in existing legislation to exempt undertakings entirely from environmental assessment hearings, but my concern, without getting into discussion of that and the merits of that, even as it's found within the existing legislation — that's replicated in this legislation, in this bill. I'm talking about the authority here that you're going to reserve unto yourself to cherry-pick in terms of deciding what kind of requirements a proponent is going to have to meet in terms of preparing their application or their environmental assessment. That isn't found in the existing legislation.

Why is it, again, if you're telling us there's going to be a full environmental assessment, that you are reserving unto yourself the authority to say, "Well, in that case, you're not going to have to consider alternative sites; in that case, you're not going to have to consider the three Rs. Just put that forward; that's okay by me"? That isn't a full environmental assessment. That's not what you're talking about giving the people of the province. Why are you reserving that power unto yourself?

Hon Mrs Elliott: You always get into the interesting discussion of whether it's better to have the decision-making power with the minister or whether it's better to leave it with the bureaucrats. Sometimes the citizens will say, "We prefer that the bureaucrats make the decision." Others will say, "No, no, we want the minister to be able to make the decision, to be politically accountable and responsible at the end of the day."

What we believe we've done here is strike a very good balance. With the terms of reference, we still have the discussion of need and alternative that does need to go on. What we believe will work is that in the discussion of the terms of reference that will occur with the proponent, with the ministries, with the public, we will be able to focus on those issues which everyone agrees at that time are the most important with regard to the environmental impacts of the project. Those will be the issues the environmental assessment will focus on.

Keeping in mind that the Ontario government still is fully supportive of the concept of recycling — all of our recycling rules are in place, all our expectations are there, and certainly there's not a community in the province that would for one minute, I don't think, consider going forward with a project that didn't have an element that was going to require the community to minimize its waste.

What we've done in the terms of reference is have all of the options there. We've got public involvement, we've got discussion and we have at the end of the day, through the Environmental Bill of Rights, another opportunity for public information and comment on those terms of reference as well.

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Mr McGuinty: I want to make it clear that you have not satisfied my concerns with respect to the reasoning behind your reserving unto yourself authority or power to cherry-pick in terms of deciding what burden proponents are going to have to face in preparing an application, but I want to move on to something else.

One of the things you have talked about today and has been said in the past is that Bill 76 is going to ensure that there's early, effective and meaningful public consultation. We're introducing a new animal in Bill 76: terms of reference. Yet there is no requirement at the very outset when a proponent prepares terms of reference that the public be involved. The terms of reference, as I understand them, are going to lay out what we're going to talk about, what's on the table. If the public can't be involved in lending shape to the terms of reference, then I don't think it can be argued that they are being given an opportunity to provide meaningful input into the environmental assessment process.

Why will the public not be allowed an opportunity? Why is there no obligation on a proponent who's developing terms of reference to consult the public? I should tell you that one of the advantages we've had as a committee is that while normally you would have been first to appear as a presenter, we had the opportunity to hear from a number of groups, including those that represent proponents, that indicated it was in many cases very helpful to find out who the opposition's going to be early on and to sit down with those people and begin to

work in a cooperative manner to address their concerns. This isn't going to allow for that. Why isn't it?

Hon Mrs Elliott: You're absolutely right. It certainly has been the experience gleaned over the years that as early as you can get public involvement — the proponent, whether it be a municipality or a private company, right now has no obligation to go out into the community and seek public involvement. What they have come to learn is that the earlier they do it and the better they do it, the more efficient the process moves along and they can address the real issues that will come to bear through the environmental assessment process.

What will happen here is that clearly the proponents will go to the community, as they have come to recognize is the appropriate way now. They will go to the community and seek advice. Before, though, the minister approves the terms of reference, it's our intention that the terms of reference be posted on the Environmental Bill of Rights registry, which is a tool that we have found very helpful in not only informing about the very fine details of a project but an excellent opportunity to receive input. That would be the final tool, sort of the second tool, to receive input before the terms of reference are finalized.

Mr McGuinty: I don't see any obligation in Bill 76 that requires you to post the terms of reference. In fact, we heard from a professor yesterday from the University of Windsor saying that there was nothing under the legislation governing the Environmental Bill of Rights that would permit the posting of the terms of reference. Are you telling me you're going to make the necessary amendments to ensure that there will be an obligation on the part of the ministry to post the terms of reference prior to approval?

Hon Mrs Elliott: It certainly has been our intention all the while to post it on the Environmental Bill of Rights registry.

Mr McGuinty: The issue of participant or intervenor funding came up a number of times yesterday, and it was admitted by those who had been proponents themselves or by others who had represented proponents that this had been a useful tool in finding out who was in opposition to a particular proposal and what the concerns were, thereby enabling them to develop a better and more environmentally sound proposal.

If this government is intent on ensuring that the public has the opportunity to give meaningful input, how can they do so if you've now allowed intervenor funding to lapse in the province? There's no provision made in Bill 76 to allow the public to meet some of the expenses, particularly pertaining to retaining counsel or hiring experts of their own because they're looking for some third-party corroboration. Why isn't that in here and how can you say that the public's going to have meaningful input if there's no funding available? Again, this is at no cost to the government.

Hon Mrs Elliott: You've also heard a couple of other stories about intervenor funding, both its successes and its pitfalls. One of the things that has happened, and I mentioned that in my speech, is that we have learned a lot about the process and how it's worked over the years. What we've come to recognize is that proponents, as we just mentioned, feel it's very valuable to have input from

citizens' groups right at the beginning, from those most affected, and it has become the norm that the proponents essentially cover the costs of the public involvement at the beginning. There always have been and will continue to be cost awards available.

The other thing is that with the Environmental Bill of Rights, for instance, and some of the other mechanisms, it's still very possible for public participation to occur.

The other thing I found interesting when we were discussing in great deal whether we would continue the pilot project of intervenor funding or allow it to sunset as was originally intended, which was our final decision, was that intervenor funding is only done by the federal government and British Columbia. It isn't in the other provinces; only some partially in Alberta and Manitoba. Certainly in many other jurisdictions of the country they have come to recognize that public participation is still quite possible through the methods that are there and through the proponents' understanding that public involvement is important at the outset.

Ms Marilyn Churley (Riverdale): Thank you for coming today, Minister. I'll start with saying that I have some good news and some bad news for you. First, the bad news: The title of your bill is nothing short of brilliant, as my Liberal colleague said, An Act to improve environmental protection, increase accountability and enshrine public consultation in the Environmental Assessment Act. Your stated goals are superb. However, the bad news is that this bill does not achieve your goals.

The good news is, however, that this bill has not been passed in law yet. You will be hearing from a lot of people. We heard from some yesterday with a great deal of expertise on all sides of the issues who will be giving some very good advice on amendments that need to be made for you not to break your Premier's promise, and that promise was that there would be full EA requirements for any dump site or related waste facilities. With this bill that promise will be broken; there's no doubt about it.

The Environmental Assessment Act is arguably the most important environmental planning statute in Ontario, and at the very heart of the EA is the criterion to consider the alternatives. You're ripping the very heart of EA out. That is what makes the EA different from the Environmental Protection Act and makes it the strongest act in all of Canada, to my knowledge, and we've been very proud of that.

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There is no doubt that there have been problems with the process. As you rightly mentioned, our government moved on the administrative side in some of these areas; more needed to be done. I think the most comprehensive report that was done, and you alluded to that as well, in this area was the 1992 report by the Environmental Assessment Advisory Committee, which you have now disbanded. They came out with some very good recommendations, some of which are included in this bill, but unfortunately some aren't that were very important. In my view, the ones you have put in have been adapted in a rather cynical way, in a way that they can threaten the entire integrity of the EA process. I believe one of the authors of that study will be coming to speak to us later

today. It will be interesting to see what he has to say about his take on your interpretation of those recommendations.

There are a couple of points I would really like to get at before I ask you a few questions. First of all, you make quite a point of talking about the fact that you now have new landfill standards, and that's good. They are improved standards, but I just want to point out that there always have been standards. They have been within the guidelines that ended up taking the force of law after they'd been written into the approval, so it's nothing new that there are now new standards; they've always been there.

It is the same with public consultation, Minister. I'm happy to see that public consultation is now enshrined in the bill, but the reality is that nobody in their right mind even tried to get to an EA hearing without public consultation. De facto public consultation happened. It's good that it's enshrined, but there's no way there wasn't public consultation. It was impossible even to prepare for an EA. They would have been turned back without proper public consultation. You're making a big deal about that and it's laudable, but it's not new.

You keep saying that now for the first time citizens and community groups will have the opportunity to be consulted up front. That isn't quite correct, because there is no requirement in Bill 76 for public consultation on the development of the terms of reference. This of course is absolutely key to what happens in an EA. This is where important negotiations take place. During that time things can be negotiated off the table, behind closed doors in secret with the proponent. Community groups, environmental groups and other concerned citizens will not have an opportunity up front to participate in the very important terms of reference which are going to set the tone for how the EA is going to be scoped. That's the time when certain issues can be negotiated off the table, including having to look at alternatives.

You have implied in your documents and you said today that the terms of reference will be placed on the EBR registry, but it's not clear to me how this would happen because the proposed terms of reference for an EA do not fall within any existing categories of proposals that go on the registry. I assume that you would be willing to amend the Environmental Bill of Rights and regulations so that this can be accomplished, because otherwise there's nothing to guarantee that it would be and there are no legislative powers to do that.

The other problem, even if it is posted, is after the negotiations have happened. It's after the fact, it's 30 days on the registry, in some cases not enough time to give the feedback that could be needed in complex cases as waste management cases are, as we well know. I'd like to hear you say today that you will amend the EBR so it's enshrined in the legislation so that it would have to go out to the public, and I'd like to hear you say that you'd give people a bit longer than 30 days to respond. What I think would really be important, and I expect you would not do this: I ask that you would consider giving the public — which has to be defined, by the way, who the interested parties are in your new act. That is not defined. I expect there could be lawsuits over that very

critical point: Who are these interested parties going to be in the process? I think that will be of great interest to community groups.

I want to ask you a couple of specific questions. Because of the Tory budget cuts, the MNR right now is believed to be out of compliance with the legal requirements of the timber management class EA approval. You referred to it. That came about through public consultation, and MNR is now required by law to go through that full environmental assessment as a result of those consultations. You have a responsibility to enforce these legally binding conditions. But I understand that everything's on hold right now, that people are waiting for you to amend the EA act to allow those protections to be gutted. At the end of the day it seems that the minister could even make the forest industry companies, rather than the MNR, the proponent. You have a lot of discretionary power here. It's my understanding from the new bill that you could do that, that you could eliminate existing protections without any need for a new hearing or a new board decision.

I want you to promise me today that you will not amend the timber EA without full consultations with the stakeholders who worked hard for years to get to this point in a very important hearing, who participated in good faith, that you will not change it without consulting again. That's my question.

Hon Mrs Elliott: You had a couple of questions. One was a number of suggestions for change. I think it would be inappropriate for me to make promises about any changes or amendments that we're going to make to this Environmental Assessment Act at this point in time, coming into the second morning of the hearings. I was very sincere when I said that the advice and the comments we'll be hearing in the next few weeks will be taken very carefully into consideration, and I certainly have noted, as I'm sure others have, the concerns that you mentioned in your question.

With regard to timber management, any requests that come from any ministry — we do get them from time to time; I'm certain those occurred during your government as well — are dealt with as they always have been in the appropriate way. There has been some discussion about timber management. I'm sorry, I don't have the file in front of me, but anything that would come before us would be dealt with in the appropriate process, and there was never a discussion or thought in the changes that were brought before you here in the Environmental Assessment Act that really would have any play with changes for exemptions or whatever that would come before us in the normal way.

Ms Churley: I want to come back to another issue I raised: the importance of looking at alternatives, particularly around waste management issues, because it's not just about how we manage our waste; it's also a resource consumption issue. The standards, of course, only deal with the pollution problem and not the resource consumption. May I say that the development of the 3Rs in large part came from the requirement that proponents look at alternatives to the undertaking. There is no guarantee any more that this will happen.

For instance, and I asked your staff this, if there's a proposal for, say, an incinerator, there's no guarantee that the proponent will have to look at alternatives, and of course there is a direct link and competition between materials that are used for recycling and burning. There is no guarantee; we know that. It could be negotiated off the table. What I was told was that if the proponent is in the same business of also recycling, then they might be required to look at that, but if not, they don't have to be. This is a big problem, that people will not be required necessarily to look at social impacts, would not necessarily be required to look at alternatives.

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My question is, how are you going to absolutely guarantee, since it's not for sure that these alternatives have to be looked at, that we continue on the path we are on in reaching the goal of 50% waste reduction by the year 2000?

Hon Mrs Elliott: I would say to you that our intention to minimize waste continues, that our goals have not changed to reduce waste by 50%. Many communities are hard at work at that, have achieved those goals. For instance, in my own municipality of Guelph we've got a new pilot project; actually, it's moving beyond a pilot project now. It's the first of its kind in North America, a composting project that's city-wide. It is expected that it will actually see a 60% reduction in the waste that's going to the landfill there.

Guelph is not an anomaly. There are many other communities that are coming up with all sorts of other alternatives to landfills. I think we have to remember that the environmental assessment changes you've got before you here go beyond just the search for landfills, although that's certainly important. Municipalities have to make some decisions as to what kind of waste management options they're going to pursue. These are political decisions that they have to deal with, and it's certainly been our government's point of view that these are decisions best made by the local communities because they are closest to and therefore most responsive to the needs and the wishes of their community.

That was one of the reasons why we lifted the ban on incineration, quite frankly. We felt it was important, if we had the standards and we have the strict requirements that we do have for emissions, that our municipalities had all of the options before them to deal with their waste in the way that worked best for their communities.

Ms Churley: You brought up incineration, and I don't have time to go into that today. You may have noticed again today another report in the paper about the problems with smog in Metro, and of course incineration continues to contribute to that. That's a really backwards step, especially again in terms of resource consumption.

However, Minister, I want to refer you to — I presume you don't have it, but this is tied in — another great title, Responsive Environmental Protection, the deregulation that your government is engaged in. On page 45 of that report there is just a small statement around, it says, improving flexibility and promoting voluntary action: "Some stakeholders recommend revoking the waste and packaging audit and work plan regulations. The ministry is seeking input on this option."

Knowing that your changes were coming out on EA around the time that these new deregulation consultation papers were coming out, how could you even put on the table a consultation around getting rid of waste and packaging audits at a time when the EA act is being gutted so that proponents do not have to look at alternatives any more? I can guarantee that in many cases, because the ministry has so much discretionary power, that is indeed what will happen. At the same time, you have on the table for consultation getting rid of a major part of that reg that will help us achieve a very difficult goal, the 50% reduction by the year 2000.

Would you commit today to take that particular component off the table so that it is not even considered? How can you possibly consider these two at the same time? It's absolutely ridiculous. My question is, will you take it off, given that the alternatives, the heart of the EA, is no longer guaranteed? It is a broken promise unless you amend it. But this, in tandem, will absolutely guarantee that we won't achieve that goal, which affects our resource consumption problem, which down the road will have all kinds of impacts that I don't have time to go into here but we will hear about later today from others.

Hon Mrs Elliott: I find it difficult to hear you use the word "gut" when we're here talking about the Environmental Assessment Act, which you just yourself a few minutes ago said was in need of reform.

Ms Churley: Reform is not tearing the heart out of the EA.

Hon Mrs Elliott: I hope that when you look at the changes, you will be thinking in terms of constructive suggestions for changes to the Environmental Assessment Act.

Ms Churley: Will you take this out of this consultation document?

The Chair: Ms Churley, will you allow the minister to finish her comments.

Hon Mrs Elliott: In the title of the booklet that you held up with regard to our regulatory review, I think the key word on that is "Responsive." Not only have we sought public advice on the changes to the Environmental Assessment Act that are before you, but we have very clearly gone out to all the people of Ontario and said, "Give us your advice on the changes that should occur to our regulatory regime." This was one of the suggestions that came forward to us, and certainly the document that you're referring to, the environmental review document, is one that is in the process of seeking advice. Whether it be on a packaging audit, whether it be on any number of things, that is the whole process here.

As far as we're concerned, our whole objective in the regulatory review is to make sure that every single regulation that we are enforcing in the ministry, we are enforcing effectively and efficiently. And most important — it is vital — is it important to the environmental protection of activities in this province? As far as I'm concerned, every dollar that's wasted on unnecessary red tape protecting the environment is money that's not invested in pollution prevention in this province. That's why we think it's important that our regulatory regime is examined carefully.

With regard to voluntary action, certainly our standards are high. We intend to enforce our standards here in this province, as I'm sure the federal government intends to enforce theirs across the country. But the new environmentalism will tell you that governments can't do it alone, that finding many, many partners to help us achieve our objectives is crucial, and voluntary action is very much a key component of that.

Ms Churley: Minister, I just have one minute left. I had a lot of questions around this that I can't ask now, but it's very clear to me that — you know, you said for every dollar spent, and I won't repeat your quote again. The reality is, due to this and your deregulation and the litany of environmental cuts and deregulation, including the laying off of 750 staff, the millions of dollars cut from the budget, the litany of deregulation that's already happened, you and your government are creating a terrible environmental deficit that our children and our grandchildren will be paying for down the road. That is the reality of your actions.

There are deficits other than monetary, and what's happening here is that for the short-term interest of moving ahead with getting development — as you put it, getting everything moving again — the reality is that you're not going to be in power when it happens, but our kids and our grandkids are going to be paying huge amounts of money in health and environmental cleanup problems as a result. So you have to keep the long term in view as well.

I saw yesterday that Laidlaw was very happy with your changes; community and environmental groups are very upset by them. That says a lot.

The Chair: Thank you, Minister, for being here this morning. Our time has elapsed, and we will now move to the next phase of hearing our first witnesses for today. You are of course welcome to stay and join us if you have time.

ASSOCIATION OF MUNICIPALITIES OF ONTARIO

The Chair: We now call forward the presenters for the Association of Municipalities of Ontario: Mr Mundell and Ms LaValley. The opportunity is 30 minutes for your presentation and/or for an opportunity for the various members of the committee to pose questions. We divide up any remaining time from your presentation between the three parties equally. For the sake of Hansard, please introduce yourself and your co-presenters and begin your presentation. Thank you for coming.

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Mr Terry Mundell: I would like to thank you very much on behalf of the Association of Municipalities of Ontario for the opportunity to appear before you today. I'm Terry Mundell, president of AMO, and with me today is vice-president Ethel LaValley. We are here today to present to you the response of the municipal sector regarding the proposed changes to the environmental assessment legislation, especially as they relate to the waste approvals process in Ontario.

AMO's response is based on our fundamental belief that in the current climate of severe fiscal constraints,

resources should be devoted to the protection of the environment instead of towards cumbersome process requirements.

At the outset, I would like to emphasize that municipalities support the province's stated objectives for revitalizing the environmental process, which is in need of urgent reform. AMO agrees with the province that reforming the environmental assessment system must achieve the objectives of greater certainty and timeliness, reduced costs to the taxpayer, while ensuring environmental protection. Some sections of Bill 76 represent a first step towards achieving these objectives.

However, after reviewing the amendments in their entirety, the association is unable to support Bill 76 in its current form. The government's proposals do not address municipal concerns and priorities for streamlining the approvals process, establishing a division of responsibilities between the two levels of government while ensuring environmental protection.

In a recent business plan document, the Ministry of Municipal Affairs and Housing has stated its commitment to reforming the relationship between the province and municipalities. They indicate, "Municipalities are accountable elected bodies that have the capability and maturity to deliver services to their citizens without detailed and specific controls from the province." From our standpoint, Bill 76 is contrary to the spirit and does not resolve the questions of governance, nor does it save costs in the delivery of services to the taxpayers of Ontario.

The context for reform: Since 1980, all municipal undertakings have been subject to the Ontario Environmental Assessment Act. Over the last 16 years, especially in relation to waste management undertakings, municipalities have devoted extensive time and resources to cumbersome and open-ended process requirements. Long delays have ensued which have cost Ontario taxpayers hundreds of millions of dollars without necessarily ensuring a greater degree of environmental protection or indeed any improvement over the status quo.

From a municipal perspective, the uncertainties with the approvals process are primarily due to several key factors:

- Unnecessary duplication between the parallel environmental assessment and planning processes.
- Lack of provincial standards and the unrealistic expectation to search for the best alternative rather than choosing an acceptable or reasonable option.
- Lack of closure and sign-offs on stages of approval.
- An overly bureaucratic and technocratic process which pays little regard to the role of locally elected officials who are accountable and entrusted to make decisions that affect their communities. In other words, there is a lack of clearly defined role for local approvals.

Over the past several years, AMO has participated in and contributed to every major environmental reform initiative. Last year, AMO was encouraged by this government's commitment to tackle reform of the environmental approvals process. We applauded the Premier's decision to terminate the mandate of the Interim Waste Authority and rescind the ban on MSW energy from waste, as an important step in returning the responsibility for waste management to municipalities in

the greater Toronto area. This was viewed by municipalities as a down payment on restoring local autonomy and accountability.

At that time, the Premier defined the provincial responsibility to be one of overseeing the environmental assessment process and setting environmental standards, while municipalities would have primary responsibility for waste disposal planning and implementation, consultation, site funding and establishing and operating landfill sites.

AMO also acknowledges the Premier's statement in the House on October 23, 1995, that Ontario's landfills ought to be subject to full public hearings under the EAA. AMO supports assessing the impact of facilities on the environment, the public's right to comment and a streamlined, transparent and upfront environmental assessment process.

As a contribution towards the reform effort, the association published its official position, AMO Priorities for Reforming Waste Management Approvals in Ontario. AMO argued that in order to streamline the waste approvals process, community and political issues should be disentangled from technical and design issues. In our view, this achieved an appropriate balance between the provincial role to introduce performance-based standards while allowing local decision-makers sufficient flexibility to proceed with their own undertakings.

In brief, the association advocated that solid waste approvals should be exempted from the EAA and instead placed under the authority of the Planning Act. Unlike the EAA, there are many advantages to the results-oriented Planning Act, some of which are outlined below:

- A front-ended process requiring the proponents to produce sufficient information and the challengers to direct their comments upfront through a prescribed process.
- A transparent process which requires public participation.
- A focused investigation into the merits of a specific site for designated uses.
- Established and clearly defined time frames for decision-making by accountable municipal councils.
- Of course, an appeal mechanism.

In practical terms, under the proposed AMO approach, once a selected number of sites are identified that meet the specified standards set by the province, the final decision as to which is the appropriate site in a local community would be made by municipal councils through an open process with opportunities for public input. Community issues related to a broad range of concerns such as compensation, cultural, planning and human issues can be effectively merged within the defined rules and procedures set out over the last five decades through the Planning Act.

From AMO's vantage, Bill 76 is a missed opportunity to merge Ontario's land use and environmental planning into one simplified process.

Matters of governance: restoring responsibility for approvals to the local level: AMO believes that a proper division of roles and responsibilities between the two levels of government is an essential element of a streamlined approvals process. Under Bill 76, the approvals

process continues to be dominated by officials at the ministry while the role of elected and accountable municipal councils is totally ignored. As proponents responsible for major capital expenditures paid for by local taxpayers, municipalities must have a greater say in the approvals process.

In our view, the concentration of authority in the hands of the director to judge the adequacy or deficiency of an EA and his/her ability to direct the proponents to take action is extremely troubling. Municipal councils cannot be held responsible for the actions of a director who is unaccountable to local taxpayers. Inevitably, the director will be empowered to micromanage the local approvals process. This is contrary to the stated objectives of this government to clarify provincial-municipal roles and restore taxpayer confidence in government activities.

Therefore, AMO recommends: that Bill 76 acknowledge and define the legitimate role of locally elected and accountable municipal councils in the approvals process; furthermore, that in relation to waste approvals, Bill 76 re-examine the province's responsibility to be one of overseeing the environmental assessment process and setting environmental standards, while municipalities would have the prime responsibility for waste disposal planning and implementation, consultation, siting funding and establishing and operating landfill sites.

Although we are disappointed with the approach taken, AMO supports a number of provisions in Bill 76 which represent a starting point for achieving shared provincial-municipal goals. Specifically, AMO supports:

- The potential flexibility in the development of the terms of reference.

- The minister's power to scope the EA and oversight of the EA board and the mediation process.

- The ability of municipalities to purchase land early in the process prior to approvals in connection with the undertaking.

- Explicit recognition of class EAs.

- Harmonizing Ontario's EA with requirements of other jurisdictions in Canada.

Inconsistencies between the province's stated objectives and the legislation: After a careful review of the reform package in its entirety, the association believes that the proposed changes to the act do not substantially improve deficiencies in the current process. The few gains contained in some sections of the bill are potentially undone by other sections. The key shortcomings and AMO's recommendations for rectifying them are outlined as follows.

Definition of the environment and the investigation of alternatives: The bill retains the broad and unattainable definition of the environment and the onerous task of considering all alternatives, including those that the proponent does not wish to pursue. A more focused definition of the environment, as well as a more realistic expectation of finding a reasonable alternative could save Ontario taxpayers hundreds of millions of dollars in studies and unnecessary delays. Although the terms of reference would potentially focus the investigation of alternatives, a greater degree of certainty is needed in the legislation itself. You can read our recommendation on that particular issue.

The role of the Environmental Assessment Board should be refocused. The powers of the EA board are largely retained in Bill 76. The Environmental Assessment Board or joint boards have in practice become decision-makers, often developing policies on an ad hoc basis. Furthermore, the nature of the hearings has become adversarial rather than constructive. Board hearings often go back to square one and cover all the issues, causing long delays and costing millions of dollars to revisit old studies.

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As indicated above, AMO supports limits placed on the board's consideration of issues to those based on the approved terms of reference. AMO also supports the minister's power to issue policy guidelines that the board shall consider in making a decision. However, the minister's authority to scope issues is neutralized by subsection 9(4), subsection 9(6) and subsection 9(7). These sections would put tremendous pressure on the board to deal with any matter raised by opponents to an application regardless of the terms of reference and the minister's direction. If this problem is not addressed, past uncertainties associated with comments from the ministry and board will continue. A reasonable compromise would be to empower the minister with the option of focusing the board's enquiry to a partial hearing on those matters explicitly scoped by the minister.

Therefore, AMO recommends that the EA board should be restricted to hear arguments only on those issues specified by the minister, as defined in the approved terms of reference. This would be accomplished by the following amendments:

- (a) deleting subsections 9(4) and 9(7).

- (b) amending subsection 9(6) to read, "The board shall only consider the following documents when deciding an application."

- (c) in subsection 9.1(1) providing the minister with an added option of referring only certain portions or aspects of an EA to be considered by the EA board under section 11.2, referral of part of a decision.

Deadlines should apply to the minister's decision of the EA. The proponent must comply with strict time lines to rectify any deficiencies. Subsection 10(3) states that the minister shall decide on the application by the prescribed deadline. However, the following subsection, 10(4), states that the minister's decision is valid even after the deadline for decision-making has passed. Also, subsection 11(3) indicates that the minister may reconsider a decision of the board or a previous decision of the minister if there is a change in circumstances or new information becomes available. The above provisions do not provide the proponent with certainty that decisions will be made within the prescribed time line.

Therefore, AMO recommend that in order to ensure greater timeliness, the minister must make a decision on an EA no later than the prescribed deadline. Therefore, subsection 10(4) should be deleted. The minister must be required to make a decision no later than the prescribed deadline or the proponent's application receives approval.

The terms of reference shall be binding on all parties. The proponent has some flexibility in developing the terms of reference. However, once reviewed by the

ministry, subjected to public hearings and approval granted, the proponent is bound by the terms of reference in preparing the EA.

In making a decision, in addition to the approved terms of reference, the minister or the board must also consider the ministry review of the EA, public comments and the mediator's report, if any. In addition, the minister must consider the purpose of the act. Therefore, new issues could be introduced at various stages without proper regard for the parameters established by the terms of reference. Therefore, the fate of an EA application could potentially be decided by issues outside of the terms of reference.

Furthermore, the opponents of an undertaking may also comment on and object to any aspect they choose regardless of the approved terms of reference. AMO believes that the minister should be empowered to specify a reasonable level of upfront public consultation to be binding on all parties.

Therefore, AMO recommends that in order to provide additional certainty to the proponent in deciding the EA submission, the minister's or the board's decision should be consistent with those issues that have been defined through the approved terms of reference. Furthermore, the opponents' comments should be restricted to those issues that have been established through the approved terms of reference. Therefore, once approved, the terms of reference shall be binding on all parties, including the review agencies, proponents and the opponents.

Furthermore, by adopting the terms of reference, the minister should be empowered to specify a reasonable level of upfront public consultation which would be binding on all parties.

Ensuring unbiased mediation: In order for mediation to be an effective and non-adversarial dispute resolution technique, the parties to a conflict must be able to enter mediation in good faith without fear of prejudice in subsequent hearings. However, given that the board must consider the mediator's report in deciding an application, paragraph 9(6)5, the parties cannot treat mediation as a "without prejudice" proceeding, especially the proponent, who is obligated to pay for the costs involved. The mediator's report would become part of the record in public hearing and subsequent cross-examination.

The act also provides an opportunity for the board to conduct the mediation. In order to safeguard against future prejudices, AMO believes that a board member who has been assigned to act as a mediator should be disqualified from participating in future EA board hearings regarding that application.

AMO recommends that the mediation process should be without prejudice and, unless agreed to by all parties, the mediator's report should not be considered by the EA board in making a decision on the environmental assessment. Furthermore, if a board member is appointed to conduct the mediation, that board member should be considered disqualified from conducting a subsequent hearing on that EA.

Bill 76 indicates that the extension of current landfills is subject to the act, ie, a full environmental assessment. AMO believes that the optimization of existing landfills, ie, the extension of current closure dates to enable

landfills to reach their final contours or an extension of final contours, should be exempted from the EA act.

Therefore, AMO recommends that Bill 76 should explicitly state that optimization of landfills will not be subject to the EA act and instead addressed through the revised Environmental Protection Act regulation 347 introducing standards.

Enabling municipalities to save for capital development projects: As indicated earlier, AMO supports a provision in Bill 76 which enables municipalities to purchase land early in the approvals process. In order to further assist municipalities in their waste management planning process, AMO has the following recommendation: that Bill 76 should enable municipalities to save and raise revenue for long-term capital funding of landfill development projects.

Towards harmonization of the EA act and the Planning Act on municipal infrastructure projects: As indicated earlier, AMO believes that the unnecessary duplication between the planning and environmental assessment processes is a major flaw. Therefore, AMO advocates a more proactive approach towards streamlining the approvals process for municipal infrastructure projects. In large-scale planning projects, such as official plans and official plan amendments, different land use scenarios and supporting infrastructure are examined in the course of the planning review process.

Attempts should be made to streamline and create a one-window approval process and, as much as possible, follow a single planning process. Section 16.1 of the new Planning Act provides for a regulation to be passed to enable a certain degree of integration of these processes. To ensure consistency, the new Environmental Assessment Act should also include a provision to facilitate this change. Therefore, we recommend that the approvals process for municipal infrastructure projects be harmonized with the land use planning process under the Planning Act. The opportunity for the integration of these two processes is contemplated under the Planning Act, section 16, and should be reflected in the revisions to the Environmental Assessment Act.

In conclusion, I would like to state that any successful environmental reform initiative must be sensitive to the concerns of the province, municipalities and our citizens. Ontario's legislation should require the highest standard of environmental stewardship that is efficient and effective. These objectives can be best achieved through approaches that restore a greater degree of decision-making authority to municipally elected councils. These objectives are not satisfactorily addressed in Bill 76.

It is important to acknowledge that elected councils on a daily basis balance challenging community issues with important budgetary implications. An appropriate balance must be achieved between meeting technical standards on the one hand and addressing community concerns on the other. AMO believes that councils should be empowered to approve all waste management options in their communities.

The current reform package includes detailed technical standards for siting non-hazardous landfills in Ontario which would demand substantial expenditures to comply with engineering requirements. As stated earlier, municipi-

palities would rather spend scarce resources on the protection of the environment instead of channelling taxpayers' funds to cumbersome process requirements: a welcome tradeoff.

Municipalities remain committed to the environmental assessment reform process. We are anxious to engage the government in discussions on how provincial and municipal objectives can be achieved. It is imperative that the two levels of government work together to ensure a balance between economic objectives and environmental protection. Once again, on behalf of AMO, I would like to thank you very much for the opportunity.

The Chair: Thank you for your presentation. We now have about three and a half minutes per caucus to pose questions. Today we will lead off with the Liberal Party.

Mr McGuinty: Thank you very much for your presentation. I want to zero in on something that you made reference to on page 6 of your presentation, some of the initiatives or aspects of the bill that you support. The first one you said was, "Specifically, AMO supports: the potential flexibility in the development of terms of reference." Can you expand on that for me.

Mr Mundell: I think one of the important things that we need to understand in the environmental assessment process is that the issues you deal with are not the same across the province of Ontario, and the ability to deal with varying issues across the province to determine what the local needs are is something which is very important to make sure that the process recognizes the diversity in Ontario. That's why we see that particular section in the terms of reference to be very important, to allow to deal with those local issues.

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Mr McGuinty: Let me ask you this at the outset. The bill in its present form then, your advice to us is that we vote against it. Is that correct?

Mr Mundell: We do not support the bill in its current form, correct.

Mr McGuinty: All right. I think you mention in here somewhere that you support the Premier's statement to the effect that there should be full environmental assessments. Is that right?

Mr Mundell: Yes.

Mr McGuinty: I can't find it but it's in here. One of the concerns I raised with the minister was the fact that she is going to have the authority to allow proponents to no longer participate in what we've up to this point in time called a full environmental assessment, which means consider all the alternatives, for instance. I just want to get AMO's position on that so I'm clear. If you're telling us that you support full environmental assessments, do you not agree then that it's important in every case that we abide by the existing definition, which is reincorporated into Bill 76, and that is, what is it that proponents have to show, what tests do they have to meet when they're putting forward a proposal?

Mr Mundell: The issue that we deal with when we talk about full environmental assessment, I think one of the things we very much need to determine is the responsibilities of the two levels of governments. In fairness, I think what the province needs to do is speak through standards and set those standards and then let the municipi-

pality, through the terms of reference, through the EA process, deal with those types of issues that we have to deal with that can meet those environmental standards.

Mr McGuinty: One final question. You indicated a concern about the minister having the authority to reconsider a decision of the board if there is a change in circumstances or new information becomes available. One of the concerns I have is the minister's authority that's found in the bill to scope a hearing. I think we should profit from the very best and latest information. I'm just wondering why you suggest some concerns about limiting the information that might be available to us.

Mr Mundell: I think it's very important that what we try and do is put certainty into the process and very much make this an upfront process. I think everybody here is very aware of the planning reform which has been undertaken over the last few years and one of the major pushes through it was to in fact make sure that the public consultation came at the front end so that we had as much information as we possibly could and deal with that up front. We very much support that. The issues generally speaking that come later on in the process are generally issues which are environmental protection issues and can be dealt with under the technical standards and those types of areas you deal with under the EPA.

The Chair: Mr McGuinty, your time is up. Ms Churley of the NDP.

Ms Churley: If you were here when I gave my presentation you would have heard that we have some differences. However, it's interesting that for different reasons we have problems with some of the same sections. I want to come to the issue around the terms of reference and I'd like to ask you, do you feel that municipalities, for instance, should be involved up front in those negotiations around the terms of reference?

Mr Mundell: I think one of the things that municipal governments have under the Municipal Act is that we very much work in an environment of openness. There are rules and regulations and procedures which we must follow. We very much believe we should be involved in those terms of reference and in fact through the regulations which we have to deal with as municipally elected councillors. That's also a very open and public process for us.

Ms Churley: In terms of consultation, I'd like to hear your views, because right now the public is not involved and neither, as I understand it, is a municipality that's a proponent with the ministry negotiating the terms of reference. We will be working to expand that because it's my view that the problems will be solved overall if you have that consultation up front around the terms of reference.

You indicated that you're concerned about the minister's discretionary powers in all kinds of areas including this, that the terms of reference could get changed after it goes out for so-called public consultation, if it does. Wouldn't it make more sense for the public, however that's defined within a particular municipality, to be included very much up front so that then there would be less chance of those discretionary powers being used and everything being changed?

Mr Mundell: The issue, as we see it, is the certainty with the terms of reference. It's one which is very important to the process. It's very important to the timeliness and it's also very important to the integrity of the process. If we as municipal councillors are the proponent we have rules and regulations that we need to deal with in a very public and open format. As I said earlier, and very much like the planning process which has been set up, my belief and our association's belief is that the earlier the public are involved, in all likelihood the better ability you have to get the terms of reference made so they are correct. But the key to success to that is then to make sure, after you have had that very open process, that the terms of reference are binding on all parties.

Ms Churley: But what happens — and you referred to this. As you know, municipalities certainly know, trying to site landfills and now perhaps incinerators is very complex. There is no intervenor funding. Complexities can arise around technical details — environmental ground water; who knows? — that could, especially if the public isn't involved up front in those terms of reference, be very key to environmental protection. Doesn't it make sense, if that isn't addressed — wouldn't you want a municipality to then be able to tell its citizens, "We will add this so it will be looked at in a hearing if it's overlooked for whatever reason"? That's the problem we've got here.

Mr Mundell: We very much see it as a role of the locally elected accountable municipal officials to make sure those local issues are dealt with and addressed in the terms of reference, and whether we're the proponent or whether it's another proponent in our particular area — I know in Guelph-Wellington, an example I was very involved in, it became a very difficult situation. With what you start at the front of the process, by the time you get to the EA board it just does not look the same. The key to success is involving the public very early. They can be involved through their municipal councils to make sure the items are addressed and then to make sure the terms of reference are very binding in the process.

Mr Doug Galt (Northumberland): Thank you for the presentation, Mr Mundell, and the tremendous amount of insight on many things that have not been presented to us in the past. One of the things I'd like you to expand on a bit — and I was a little surprised at introducing it here — is the definition of "environment." Certainly that's something we have to zero in on. You're suggesting that the sociocultural factors maybe shouldn't be in there. Do you want to just spend a couple of seconds expanding on that and your feelings or your organization's feelings?

Mr Mundell: Our particular feelings on that are that it goes somewhat back to the definition of the roles and responsibilities between the two levels of government. Some of the issues we see very much as provincial in terms of setting standards. We think that when you define the environment you need to define it from a provincial government type of goal, roles and responsibilities, and in those you deal mainly with the technical type of issues — the landfill standards, those types of issues. When you redefine "environment" you start to look at all those other issues which I happen to see as being local.

The social issues, all those other things I see as being dealt with then through the local process, through your municipal councils. I see the very distinct separation between technical issues and local issues.

Mr R. Gary Stewart (Peterborough): At the top of page 5 you have, "In practical terms, under the proposed AMO approach, once a selected number of sites are identified" etc and the appropriate site is chosen in consultation with municipal councils and public input. Certainly the municipal councils and the public input I have no problems with, but what I read into that is that the process you're suggesting is exactly the process we're doing now, that we're going to find half a dozen sites in a municipality, totally alienate all the people around it and go through the same process we have in the past. I believe that under Bill 76 it alleviates that problem, where you look at economic impact, social impact, environmental impact, willing host etc, and if it meets the terms of reference and the criteria, you then go and build your site, whereas this, in my mind, says that it's exactly the same as what we've been doing in the past except for the final decision-making.

Mr Mundell: I would suggest that after having been through that process I don't want to go through that process again, in fairness.

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Mr Stewart: That's what surprised me. A clarification on that particular case, because I read that as what we've been doing other than the final decision-maker.

Mr Mundell: No, that is not the case at all. What happens now is that there's a difference in terms of what's the best site and what's the appropriate site. That's where the difference comes in. Right now, under the environmental assessment process, we have to go out and find the best site, and that particular process which we use today quite frankly does not, in my opinion and through Guelph-Wellington's search, allow you to choose the best site.

What we would like to do is deal with the specific standards which are set by the province and which enhance environment protection and make sure that is done, use those particular standards in concentration with the appropriate community needs and then try and go out and approve or find the specific site within the community. I don't envision this process to be going out and finding 50 sites and starting to go through the process. It's too cumbersome, it's too difficult, it's too costly, it puts your money into process and not protection, and that's definitely not what we are —

Mr Stewart: I can't agree with you more, but when I read the first couple of lines in there, I get very concerned that it's much similar and you're going to totally alienate the people of the province much the same as we have now. I appreciate that.

Mr Mundell: Just maybe to that, I think when you go through this particular process, you will not find 20 or 30 sites within your municipality — in our case it's our county — that would meet the specific standards set by the province. I don't believe those standards would allow that to happen, the process we have today.

The Chair: Thank you kindly for joining us today and appearing before us and sharing your views. We hope

you see the results of your views in the pending legislation.

ONTARIO WASTE MANAGEMENT ASSOCIATION

The Chair: We would now call forward the next group, the Ontario Waste Management Association.

Mr Terry Taylor: Ladies and gentlemen of the committee, good morning to you all. My name is Terry Taylor. I'm the executive director of the Ontario Waste Management Association. Joining me here today are John Sanderson of Brampton, the president of our association, and Tom Barlow and John Zimmer, who are associated with the law firm of Fasken, Campbell, Godfrey. Mr Barlow and Mr Zimmer greatly assisted us in our analysis of Bill 76 and in the preparation of our suggested changes to it.

The OWMA is pleased to have this opportunity to appear before the committee. We believe our opinions will be helpful to you in this debate. I say this because of the extremely important role our membership plays in Ontario's waste management and recycling industries. We are an integral part of those industries.

My comments this morning will touch on three topics. First, I want to briefly describe our association for the benefit of those of you who may not be familiar with us. Second, I want to discuss some critical weaknesses that we have identified in the bill. I also want to introduce some amendments that will address those shortcomings, in an effort to strengthen the bill and to make it a more effective piece of legislation. Finally, I want to outline the two very different end games that are possible, depending on how you craft the final version of the bill.

With nearly 300 members, the OWMA represents the private sector. Our members provide the products and services for a better environment. Our direct service members collect waste from two thirds of Ontario's residences and from over 90% of its businesses.

OWMA members are also actively engaged in all 3Rs activities. One of our members invented the blue box program, which is now supported by over three million Ontario households.

We operate material recovery facilities and remarket Ontario's recyclable materials throughout the world.

Our members conduct waste audits for their customers and provide them with expert advice on the implementation of waste minimization strategies.

We also own and operate landfill sites, transfer stations and energy-from-waste facilities. These are the types of infrastructure investments that are subject to environmental assessments.

We are here today because Ontario's present environmental assessment system has three fundamental flaws: It costs too much, it takes too long and it basically doesn't work.

As an aside, we want to commend this government for acknowledging what the real problems are with the current process and for having the political courage to try to fix it.

These deficiencies are identified in the backgrounder that accompanies Bill 76, implying that these amendments

to the Environmental Assessment Act will render the EA process less costly, more timely and more effective.

The synonym for effectiveness is certainty. I can assure you that the most critical task before you is to dramatically increase the certainty for a proponent.

Certainty means different things to different groups. This bill requires the minister to make any number of decisions during the many stages of an application's consideration. Hence, to the members of the Ontario Waste Management Association, certainty means that those decisions will actually be made rather than postponed or needlessly delayed.

The prospect of having a hearing drag on for years, with its attendant costs escalating into the millions of dollars, is what primarily deters the private sector from bringing forth proposals. Therefore, if the element of certainty is satisfactorily addressed, then the problems of time and money will quickly fall into place.

We are particularly pleased with the options presented in subsection 6(2) with respect to the composition of the terms of reference. In particular, 6(2)(c) acknowledges that Ontario is a diverse province and that different proponents will have different issues to address. The flexibility provided by this section still safeguards and protects the environment while recognizing that, in effect, there are alternative methods available to accomplish that. You would greatly undermine the intent of this bill if you make any changes to the present wording that would either limit the scope of 6(2)(c) or reduce the available latitude that is inherent in its current form.

Our association conducted an exhaustive review of the bill. We tried to identify those subsections that would operate to increase uncertainty, and we crafted alternative wordings. Our suggestions are attached to this document. While each has merit and each would increase the effectiveness of the bill if incorporated, there are some amendments that are more critical than others.

First, let me refer you to amendments 21 and 22. If your goal is to truly make the environmental assessment process more effective, then it is absolutely essential that the minister be able to limit the issues that a board can consider. As this model has been explained to us by ministry staff, the board would only consider those issues that have not already been resolved between the parties. However, if the present wording remains, a hearing could be consumed with argument on topics over which there is no dispute. This would only serve to lengthen the hearing, drive up the cost and increase the uncertainty.

I think it unlikely that any member of the Ontario Waste Management Association will submit a proposal under this new process if the minister's ability to scope a hearing is not substantially improved. Amending subsections 9(3) and 9(4) as we have suggested here is absolutely essential if you expect to see any new significant private sector investments in the waste management industry in this province.

Let me now turn to amendment 33. We said earlier that certainty comes from the knowledge that decisions will be made. We want to amend section 11 to enable the minister to choose a fourth course of action, namely, the option to refer the matter to a joint board at the request of the proponent. By doing this there is no need to

engage other tribunals or entities as referenced in 11.1, 11.2 and 11.3. The introduction of alternative decision-making bodies just adds to the uncertainty. A joint board is an appropriate available forum to consider any unresolved issues.

1140

If you amend section 11 as we propose, it is our submission that sections 11.1, 11.2 and 11.3 can then be deleted. The minister has the authority to issue a decision with conditions which must be satisfied before any approval takes effect. We would prefer to see these conditional decisions by the minister rather than referrals or deferrals to other entities.

Let me now turn to amendment 37. The government has made much of the deadlines that appear throughout this act. Unfortunately, the current wording allows the minister and/or the board to endlessly defer the proceedings for reasons that are largely undefined and open to a wide range of interpretation. These are, in effect, deadlines without teeth.

Once again, we want to build certainty into the process. Since it seems an impossibility to develop an appropriate sanction that would apply in the event that a deadline is missed, we propose an alternative approach. Actually, our solution is simple: Just limit the number of times that a deadline can be extended. This method provides the mechanism that ensures that the deadlines have meaning and that the decisions will be made. Even if these decisions go against us as proponents, it is our opinion that a negative decision is still better than an endlessly delayed decision.

If you are serious about this notion of strict timeliness, you will incorporate this proposal into the bill.

Now I would like to refer you to amendments 16 and 19. Like the government, we too believe that the increased use of mediation will contribute much to the resolution of issues in an environmental assessment. However, it would be naïve to think that all issues will be resolved through mediation. There will of course be unresolved issues that will ultimately be referred to a hearing.

If you want this mediation process to be effective, you must enable the parties to speak frankly and without prejudice. If mediation becomes just another type of discovery, with everyone's statements on the record, then mediation will simply become another stage of an unnecessarily lengthy process. Therefore, in fairness to all concerned, we propose that no portion of the mediator's report that refers to an unresolved issue be made public. As well, we suggest that for all issues that remain unresolved after mediation attempts, the parties will have participated in the mediation without prejudice to themselves.

Let me now turn to amendments 9, 10 and 11. We are concerned that one possible interpretation of the present wording in subsections 7(4), 7(5) and 7(6) could mean that a rejected environmental assessment would require a proponent to start at the very beginning by submitting new proposed terms of reference. If that is not the government's intention, then either redraft these sections appropriately or incorporate our proposed text.

Let me also make a comment about amendment 26. This amendment is in keeping with the bill's intent to guarantee early public input. It should therefore be incumbent on those interested parties to come forward early and to get involved. It might also be a way of addressing the issue of who is an interested party. An interested party is obviously somebody who comes forward and expresses an interest early on.

I will not make specific comments on the other amendments, but at the end, I will be pleased to answer any questions you may have about them.

Let me conclude by saying this: The government has chosen to separate consideration of the landfill standards initiative from Bill 76. While there may be merit in doing that, you must realize that ultimately the two come together and become part of the same issue.

A company can make the business decision to hire a contractor to build a landfill that has been approved. That is a very different decision from attempting to gain that approval by starting down the environmental assessment road in the first place.

Even if the new landfill standards were uncontentionous — and they are not — no private sector proponent would submit a project for an environmental assessment if Bill 76 remains as it is presently drafted. On the other hand, if the cost of building an overengineered landfill outweighs the economic benefits of operating it, then no matter how smooth the EA process, no one will spend the money to build such a facility. All the pieces of the puzzle must fit together if you want the private sector to take the lead on investing in waste management infrastructure.

Let me give you a real-life example of what we're talking about here. Last week, the news reported that several months ago, the town of Tillsonburg and WMI, Waste Management of Canada Inc, an OWMA member, began discussions about building a landfill here in Ontario to handle waste for Metro Toronto. This would be a multimillion-dollar project, financed entirely by the private sector. It would provide many short-term and long-term jobs. It's the type of infrastructure development that we haven't seen in Ontario for over a decade and it would keep Toronto's waste disposal fees here in Ontario. WMI was denied its request to appear before you, but if they had made a presentation, I'm sure they would have told you that those discussions might appear premature, now that they know both the nature of the proposed landfill standards and the extent of the environmental assessment reforms outlined in the current version of Bill 76.

This committee has the opportunity to create an environmental assessment process that will balance the legitimate concerns of the environmental groups with those of the business community, but if you fail and at the end of all this we have an EA process that is still clouded with uncertainty, still costs too much and still takes too long, then the ultimate environmental legacy of this government and indeed this Legislature will be that it chose waste export to the United States as its preferred method of waste disposal.

Simply put, substantial amendments like the ones we have proposed here today are needed if the government

is to deliver the meaningful environmental assessment reform that the province desperately needs. Ontario should be self-sufficient in the management of its waste. With the right leadership, the leadership that you can give, it can be.

Thank you, and again, we appreciate the opportunity of being here, and we'd be pleased to answer any of your questions.

The Chair: We have five minutes per caucus. We lead off with the NDP.

Ms Churley: I wonder if you could elaborate on your statement relating to your request for amendments to 9(3) and 9(4), that if these aren't amended, you would absolutely not put in proposals in Ontario for a landfill. I suppose I would ask, what is worse in this, in your consideration, than what's already in existence?

Mr Taylor: I'd be happy to answer the question, but I have to admit, I'm a bit confused. In the last three and a half years of your government's mandate, we tried to meet with the Minister of the Environment six different times on matters that we thought were extremely important, and every time we asked for a meeting it was denied to us. If the NDP wasn't interested in our opinions when you were the government, why would you be interested in them now?

Ms Churley: Mr Chair, I think I will pass for the time being.

The Chair: You pass on all questions? Fine. We'll move to the government side.

Mr Galt: Thank you for the presentation — very thoughtful and certainly some interesting thoughts in it. You made reference on many occasions to certainty and concerns about it. One area you didn't make reference to, and we have had comments before and some thoughts on it, is the area for the proponent when developing the actual environmental assessment, that once the terms of reference are in place, there is not a time line for the proponent. Would you see time lines being put in there to promote certainty in the process, whereby there is an end to it, there is a limit to how long the proponent has to develop those terms of reference? In other words, it's open-ended right now for the proponent.

Mr Taylor: Ultimately, the proponent isn't going to bring forth his application until he's satisfied that he's done his homework and that he's given proper research and thorough research on all the issues he's going to have to confront and satisfy. I think our certainty starts from the time the application is submitted. That's when we want to see the decisions made. Some proponents and some undertakings may take longer than others to bring forth for consideration. Putting a time line on the proponent to submit the application I don't think is as important as having the clock start to run and make sure decisions are made once the application is in.

1150

Mr Galt: When you develop the terms of reference for how you're going to develop your environmental assessment, would it be logical to have in there the time frame you would accomplish those terms of reference in?

Mr Taylor: Again, the flexibility that is provided by not having you meet a time line allows the proponent to make sure that as he fulfils the requirements of the terms

of reference and makes his application and his environmental assessment ready for presentation, he can take as much time as he needs to make sure he does the job right. I'm not sure you'd be all that advantaged or disadvantaged by having to meet the clock. I think you have to do the job thoroughly and properly. In some cases it will take longer than others; in some cases not as long.

Mrs Julia Munro (Durham-York): We've heard many groups that have been very concerned about the nature of the terms of reference and the question of the public consultation at that point. I wonder if you could give us your views on the nature of the terms of reference and a response to the concern raised in the hearings about the need for a mandated role of public consultation in the development of terms of reference.

Mr Taylor: Practically speaking, I think no terms of reference will be approved by the minister unless it is clearly laid out what steps the proponent is going to take to consult with the public who might be affected by the proposal. It's a matter of negotiation, if I could use that word, or a matter of a memorandum of understanding, or just a matter of a meeting of the minds, for each different undertaking, as to what the terms of reference for that undertaking should be. The legitimate public concerns are the same from one undertaking to another: "Is it safe? Will it leak? Am I downwind? Am I upwind? What am I going to do about traffic?" and so on and so forth. The public's concerns tend to be consistent.

I think the negotiation of what should be in the terms of reference is a matter between the proponent and the minister, and as long as the public is enabled to voice their concerns and to get the appropriate amount of public education, be consulted, I think that's the important thing here. I don't think they necessarily have to be involved in the development of terms of reference, but they certainly have to be into the loop early on to make sure their considerations are taken into consideration.

Mr Mike Colle (Oakwood): I guess the bill should maybe add another phrase in its title, that is, a bill to ensure the exportation of waste to the United States. It seems that is the major flaw in this bill, that it in essence still encourages the export of our waste to the United States and the turnover of millions of dollars in disposal fees to the United States. Metro is on the verge, it seems, of going the US route in hauling our waste, to Utah, I think it is. How many dollars would be lost, if Metro approves that waste haul contract to the United States, to the Ontario economy?

Mr Taylor: I'm not privileged to the economics of the individual proposals. I don't think the bill is pushing waste export. What we're saying is that if the process isn't fixed, if you don't provide for some meaningful reforms, then you're going to come to a stage somewhere down the road where you're running out of landfill space, where municipalities don't have any money because their transfer payments are being cut back, the private sector isn't about to go through protracted and open-ended and uncertain environmental assessments to try to get proposals built — they're not going to waste their money that way — and you're going to have an ever-increasing need for disposal capacity and no adequate or rational process to have landfills built here in the province.

If you can't dispose of your waste here because there are no landfills available to do it, what are your options? One option is to export it outside the jurisdiction. We're not saying that the bill promotes waste export; we're saying that a flawed process is ultimately what is going to drive you to that inevitable conclusion.

Mr Colle: But in essence, the way the bill is presently crafted, it seems to me from your comments that it makes it virtually, rationally or physically impossible for the private sector to undertake an infrastructure investment that will ensure that large contracts of waste disposal like the ones from Metropolitan Toronto will stay in Ontario.

Mr Taylor: Mr Colle, we're saying that the bill's attempt to fix the problems of time and cost uncertainty still has some shortcomings to it. You can address those issues, you can fix the problems of time and cost uncertainty, you can make the process better, but you're going to have to amend the text of the bill to do it as we've suggested. If you make the process better I think you'll see a number of private sector proponents come forward to propose building waste disposal facilities here in the province. This is where we do business, this is where we want to do business, but we can't do business with this open-ended crap shoot of a process we have right now.

Mr Colle: I think you've listed your proposed amendments in priority. If I'm not mistaken, the thing you're asking for first is to amend subsections 9(3) and 9(4) as most essential.

Mr Taylor: The proposal to focus the board as it is presently crafted in the bill in our opinion might focus it from the standpoint of issues on which you can hear evidence but doesn't preclude the board from hearing argument on anything it wants to. Our concern is that if the board is only going to deal with unresolved issues, then limit them by dealing with them only by argument or testimony on unresolved issues. That's what the board is there for: to deal with issues that are in dispute.

I can tell you that the process would quickly fall off the rails and the board would be running back at the end of the 60 days saying, "We need more time here because we haven't heard argument or evidence on issues that we think we should be hearing evidence on; we want to have the minister amend the direction to the board because issues have been raised and we're not entirely satisfied," and we'll be right back into the process we're in now. It goes on forever, resolves nothing, costs millions of dollars and nobody is further ahead.

Mr Colle: As the bill presently stands, you would ask that we vote against it unless these amendments were to be made.

Mr Taylor: I'm asking you to adopt our amendments and then everybody is a winner.

Ms Churley: I would like to use my two minutes to make a comment, given that Mr Taylor has declined to answer my question.

I would like to say that your presentation today was extremely one-sided. You came in here taking the position that basically can be summed up in five words, "My way or the highway." Generally, no matter which government is in power, it is not the way we do things around here. There are compromises to be made, balances to be found. There are people who have a different point

of view than you do and those balances, even by this government, have to be at least taken into account.

You mentioned and bragged about having developed the blue box. I can assure you that it's the very citizen groups and environmental groups that in my view you would like to shut out of the process to the extent possible that made it possible for your company to get into the business of developing the blue box system. I was one of those people who years ago fought hard to get all levels of government to start looking at the three Rs as another way, a more environmentally sound, sustainable way of dealing with our waste.

I certainly am not asking a question at this point and don't expect a comment back. I would just like to say that I think it's important that no matter who is in government or who is in power, even though we have our disagreements, we all try to work together to come up with the most environmentally sustainable way of dealing with our garbage. That's the position I take; that's the position my party took and will continue to take.

The Chair: Would you like to make a final comment, Mr Taylor?

Mr Taylor: It's no use.

The Chair: Thank you very much for sharing your views with us today.

We will reconvene this afternoon at 2 o'clock.

The committee recessed from 1201 to 1403.

ONTARIO SOCIETY FOR ENVIRONMENTAL MANAGEMENT

The Chair: Our first witnesses are from the Ontario Society for Environmental Management. Welcome to our hearings. Thank you for taking the time to appear before us. You probably have heard the instructions. You have half an hour and the remaining time will be divided equally among the parties. The last to go was the government side, so the opposition side will go first this time around with the remaining time.

Ms Janet Amos: Thank you, on behalf of the Ontario Society for Environmental Management, for the opportunity to speak before your committee today. With me today is Ann Joyner, past president of the Ontario Society for Environmental Management. My name is Janet Amos. I'm the current president.

Our paper today is a combination of views and comments from many contributors from our own society. I want to tell you a little bit about the society before we begin.

We're a volunteer organization of professionals. We are self-supporting from our members' dues. The Ontario Society for Environmental Management, OSEM, was established in 1976 in response to a need for an interdisciplinary organization to both improve and promote the practice of environmental management in Ontario. The membership, which is currently approximately 150 professionals, is drawn from a wide range of disciplines including physical, biophysical, social sciences, planning and law. Our members are united by ecologically based principles and a resolve to maintain and enhance environmental health in the province today.

The society encourages high standards of competence and ethics among its members and supports education and research. The society promotes environmental management through conferences, meetings, seminars, workshops and the publication of a society newsletter, and participation in environmental policymaking and review such as we have here today.

The membership has a strong interest in the way in which land use and environmental planning is carried out, and the views contained in this brief are those of the council of the society, but given the time constraints, we were unable to gain the concurrence of the entire membership. However, we are confident that they are reflective of the views of the whole of the society.

On the whole, we view Bill 76 as what we term an incremental improvement to environmental assessment in Ontario today. We're here today to offer constructive suggestions to assist the government in its efforts, as we heard this morning, to focus on environmental impacts through a reformed EA process. It's important to have that smooth process to ensure that the key focus remains on mitigation of environmental impacts and the protection of our natural heritage features.

The context from which Ann and I will be speaking today and our paper speaks to is our background of approximately 15 years each of experience in both public and private sectors in environmental management. This has involved our roles as proponents, agents for proponents, and as well, agents for opponents of the process and projects within the process.

We work in multidisciplinary teams on federal and provincial environmental assessments as well as class environmental assessments and we work extensively with the other environmental protection measures found in the province, including provincial regulations and the Planning Act.

We view environmental planning as an integrated whole of which environmental assessment is only one component, albeit an important one. We've heard a lot this morning already about the implications for solid waste and solid waste projects and we want to stress that this is not the only type of project which is being considered under the Environmental Assessment Act today. Included in the list of topics which Ann and I have dealt with over our careers are transit and road projects, water and waste water infrastructure, storm water management as well as solid waste and utility corridors.

With that, I want to turn it over to Ann, who will review our key recommendations. We'll both be happy to answer questions from the committee.

Ms Ann Joyner: I'd like to thank you as well. I'll give you a little highlight of the organization of our comments. On the first two pages you'll find a summary of the recommendations that we're making. Secondly, we provide some general comments. We then provide a little bit of a detailed overview of our comments with respect to the terms of reference and integrating environmental assessment and planning in the province. Then at the back, under section 2.4, you'll find a whole list of additional recommendations and comments.

I'm going to launch first into our general response. OSEM is generally supportive of the fundamental direc-

tion of the bill. We are encouraged to see that the principles of the environmental assessment process and the types of projects subject to the act have been maintained. That is a fundamental component of the new bill that we are quite pleased with. We see that the environmental assessment process has added value to planning in Ontario through the consideration of a wide range of environmental effects, the need to consider alternative solutions to problems, the need for clear documentation and public consultation. All those elements have been maintained in this bill and we were very pleased to see that.

I'd like to add that we also see that the Environmental Assessment Act and the precedent it has set in terms of the way planning is done in the province has spread beyond the way work is done for the environmental assessments to work done under the Planning Act and other legislation. It sets a very fine precedent for environmental planning in the province, and we're glad to see that maintained.

We also support the proposed changes to the class EA process. Most of the work that is done in the environmental assessment area is actually done under the class EA program. Most of our members work almost wholly with that process. We are satisfied that the class EA process has been maintained in this bill and strengthened and also made more flexible.

On the other hand, we do have some concerns about the bill. These relate primarily to the level of uncertainty that remains with the way that environmental assessment will actually be undertaken in practice in the province under this new bill. In particular, we're concerned with the approach that will be applied to transition to the new legislation, the use of terms of reference, the way EA and planning are going to be integrated and how consultation will actually occur in practice. Those are the areas I'm going to speak to for the rest of my time.

1410

Fundamentally, we see that this bill would be strengthened by providing greater certainty in those areas through associated regulatory or procedural guidelines that should be put in place. In our view, they should have been put in place at the same time the bill was tabled so that it would give people like us who actually do this work a greater level of certainty and trust that the intent of the government is what we think the intent is: to maintain the good things in the environmental assessment process. We have some very specific suggestions on what we think could be done to provide greater certainty to supplement the bill as it stands today. I'm going to start with the terms of reference.

In the past, our foremost criticism of the environmental assessment process has been of course the length of time it takes, the lack of certainty in the process and the lack of autonomy given to proponents; in other words, they need a greater ability to customize the environmental assessment process to their specific needs. I think you've probably heard lots about the problems with environmental assessment. So we do support the terms of reference in that they appear to provide a process that will allow greater certainty and will allow this customiz-

ation of individual environmental assessments to circumstances as they arise for specific proponents.

Although we support the terms of reference from that perspective, we find that the legislation leaves a lot of uncertainty about how the terms of reference actually will be implemented. That revolves around two areas:

First of all we are concerned that a specific section, clauses 6(2)(b) and (c), allows too much flexibility for proponents to deviate from the fundamental requirements of environmental assessment as they are stated under subsections 6(1) and 6(2). Subsections 6(1) and 6(2) outline what the basic requirements of the EA are: the assessment of alternatives, the need to include public consultation, the need to address mitigation etc.

We'd like to see regulations or guidelines passed in the very near future that clarify the intent of the government that environmental assessments will not deviate from those two subsections, 6(1) and 6(2). It appears that terms of reference could be used for example to remove the requirement for the assessment of alternatives. We don't think that's the intent of the government, but at the moment it isn't clear.

Secondly, we think the terms of reference should be used or should be able to be used for proponents to focus their environmental assessments if they have completed parts of the environmental assessment process through one of the other mechanisms for planning in the province, such as the Planning Act or a master planning process. For example, a municipality might complete a strategic plan that looks at alternative growth scenarios, looks at alternative infrastructure requirements through one of their planning processes, like an official plan update or a master plan.

When they then complete the individual environmental assessments for the infrastructure of a particular road or stormwater facility or a water or waste water facility, they shouldn't be required to go back and repeat the work that was done at the strategic level. I think the terms of reference could be clarified to make it very obvious to municipalities that they can use them in that manner to streamline the process and integrate the two processes.

We have a couple of other comments on the terms of reference.

Changes to work plans, which is really what the terms of reference are — they're a work plan — are inevitable in the environmental assessment process. New data can arise or a new issue can arise or the need or opportunity may change during the terms of the project. There needs to be a mechanism in place to change terms of reference, and our recommendation is that the minister should be given the authority to allow changes to the terms of reference.

We also would recommend that there be an appeal mechanism for terms of reference and that it be limited to the proponent. Our concern is that terms of reference will be approved that are not affordable or implementable by the proponent, so a project can't proceed because the terms of reference are too onerous or too unrealistic or perhaps just not relevant. We believe that proponents should be able to appeal the terms of reference to the minister for changes.

I'd like to go on to our second major area of comment, which is the need for better integration of environmental assessment with planning. I'm going to start with a few remarks about why we believe that integration is important. I think you're going to hear this theme from a number of different organizations. You may have heard it this morning; certainly OPPI supports us on this. We believe that the time has come to integrate the Planning Act and EA processes to improve environmental planning, avoid duplication and streamline the decision-making process.

We believe that the demand for infrastructure is clearly tied to the distribution of population and employment. You don't need infrastructure if you don't have growth occurring in a particular area, so the beginning point for environmental assessment should be the need and opportunity, which ties directly into approvals under the Planning Act. Most community plans, like official plans or master plans, include some infrastructure components that are subject to the Environmental Assessment Act, so automatically you've got planning applications and environmental assessment applications that are overlapping. Furthermore, decisions on where to locate infrastructure should be consistent with planning policies contained in official plans and as put forward under the new Planning Act this past year.

There are many problems currently existing with environmental assessment and planning occurring separately. My own practice has experienced these and many of our members have as well. I won't go on in a lot of detail here, but we see that at a fundamental level good environmental planning isn't necessarily occurring in every municipality. Under the Planning Act, municipalities could undertake land use decisions using a process such as the environmental assessment process, where they look at alternative growth scenarios for their municipality: "Do we grow east? Do we grow west? What are the implications for the environment? What is the associated infrastructure with that growth?"

Some, maybe I should say many, municipalities are taking that approach today, but it is not consistent across the province because it's not required under the Planning Act. What we find is that when the infrastructure decisions come forward under the Environmental Assessment Act, for example a road associated with a growth area, it's the environmental assessment process that gives the public a kick at the can on why growth is occurring in that area in the first place. It throws the whole thing out of sync, where you've got growth already being approved under the official plan and the associated infrastructure gets caught up in this environmental assessment process subsequent to the growth being approved.

At a more procedural level we have two sets of public consultation activities occurring for the two processes, and sometimes they're not synchronized; the documentation is often duplicated and it's extremely confusing for the public.

Our suggested recommendations to solve those problems include first the one I already mentioned, that for individual environmental assessments we could have regulations or guidelines that make it clear that terms of reference can be used to focus environmental assessments

where another strategic process has already assessed alternatives and undertaken consultation and fulfilled the requirements of environmental assessment. We need to have regulations or guidelines not only to clarify that, but we need to have education for municipalities so that they understand this option is available to them. These regulations and guidelines should clearly define the basic elements that must be present in the official plan or master planning process to fulfil EA requirements. For example, if it's a requirement that consultation occur, that should be clear to municipalities. If it's a requirement that alternatives need to be evaluated, that should be clear to municipalities. They can then rely on their strategic documents for all subsequent infrastructure projects that fall out.

Second, there is a process under way right now to revise existing parent class environmental assessment documents. These documents are the cookbooks that tell us how to undertake stormwater, water, waste water and transportation projects for municipalities. We think it's essential that mechanisms be integrated into these revised documents to allow this same kind of integration between planning and the class EA process. We could embed that right in these class EA documents so that as municipalities undertake infrastructure projects, if some steps in the environmental assessment process have already been covered through an official plan or a master plan, they can rely on those strategic documents.

1420

Third, it's our understanding that the class EAs can now be used more flexibly. For example, municipalities could complete their own parent class EA document to cover all their own infrastructure projects. If this is the intent of how the class EA process can be used, we think it should be clarified and that training or education should be provided to municipalities so they understand that they can be writing their own parent class EA documents.

We think that teamwork is essential for better integration of EA and planning, and that means that the Ministry of Environment and Energy and the Ministry of Municipal Affairs and Housing have to support the concept of better-integrated planning. Integrated planning means better environmental planning under the Planning Act. Our experience is that municipalities understand that and many officials in the two ministries understand that. What we'd like to see is that they support the process that allows that integration.

With regard to integration, with the proclamation of this bill we hope to be involved in ongoing consultation activities that will provide greater clarity and produce these regulations and guidelines. We'd like to be at the table and provide our input based on the long experience of our members.

Finally, I'm just going to highlight a couple of additional comments that we have with regard to the bill.

First, with regard to harmonization, we suggest that the legislation include a safeguard that the most comprehensive legislation will prevail, whether that's the federal legislation or the provincial legislation. If any of you are familiar with the two sets of legislation, they actually are not completely compatible. Each has its own sections. They have different requirements, and I think it's import-

ant that we get the best environmental planning out of the harmonization.

With regard to the obligation to consult, we support the fact that this has been enshrined in the bill but we think that some guidelines should be prepared to make it clear what section 6.1 is intended to mean, and in particular that it ensures that consultation occurs at all steps in the process, including the development of the terms of reference themselves.

With regard to remedying deficiencies, we think the seven-day period is completely unrealistic and should be deleted.

Section 12.4 on transition: We need better guidance on how transition will occur. There are many projects under way in the province right now, in particular in the waste management field, that will need more certainty than is provided in this bill on how transition will occur.

With regard to class EAs, the sections under 14(2) are too discretionary and there needs to be greater clarity on what the contents of a class EA would be. In particular it should be enshrined that all class EAs, these are the parent documents, will fulfil section 6.2.

With regard to mediation, we're supportive of the mediation process as it's proposed.

Finally, with regard to cumulative effects, the provincial legislation could and should be made more consistent with the Canadian Environmental Assessment Act. The Canadian Environmental Assessment Act has explicit recognition of cumulative environmental effects. Things like malfunctions and accidents, the significance of effects and the capacity of renewable resources are requirements for those projects under a screening for environmental assessment under the federal legislation. There's no reason why the provincial legislation shouldn't be consistent with the federal. It will make harmonization a lot easier.

My own practice is finding that the federal legislation is becoming more and more applied. I think in the past it wasn't applied in every circumstance where it could have been. We're finding it being applied in a much more rigorous way, and these issues of harmonization are going to be more and more important.

We look forward to working with the government in implementing and preparing subsequent documents to support this legislation. We thank you for inviting us to speak today.

Mr Colle: I have a brief question in terms of your discussions about the relationship between master or official plans of municipalities and EA requirements. I was just thinking of an example. If a municipality, for instance, is going to widen a road or install a new transit way, are you saying that if there is an official plan process going on that takes that into consideration, there shouldn't be a specific independent EA done on the new road extension or widening as long as it's included in the official plan review that's taking place?

Ms Joyner: The official plan process would fulfil what I call phases 1 and 2 of the environmental assessment process, which are the need and opportunity and the assessment of alternatives to or alternative strategies. It would assess why a road, why a transit way and what's the best corridor for that transit way. You still need to

complete the back end of the environmental assessment process, which is, what are the specific effects of that undertaking on the environment? Our proposal is that the official plan or master plan can be relied on to fulfil the front end of the environmental assessment in those cases where it's been completed.

Mr Colle: The back end or the technical end still has to be undertaken, though. Is that what you're saying?

Ms Joyner: Yes.

Mr Colle: Okay, thank you.

Ms Churley: Thanks for your presentation. I think we're in general agreement on many problems expressed in your response.

One thing I want to clarify with you is that you said you're pleased to see that the bill keeps the fundamental, important aspects of an EA, of which of course the heart is looking at alternatives. Then you refer to a concern you have about the terms of reference, that you don't think it's the government's intention but that throughout those negotiations with the proponent that could be lost. The fear here is that there is no guarantee that at the end of the day all fundamental conditions, like alternatives, after negotiations between the proponent and the government, will be looked at. I just wanted to clarify for you that this is a key area of concern because that is what will happen in some cases.

I know you asked that the terms of reference criteria be clarified. How do you feel about who should be involved in that process of negotiations for the terms of reference?

Ms Joyner: Our position is that we'd like to see more clarity enshrined in regulations or guidelines now. We were pleased with the way the Planning Act was put forward in that the regulations and guidelines associated with that act basically came out at the same time that the legislation did, so we had the whole package in front of us. It's our understanding, from speaking to staff at the ministry, that the intent is to use things like the existing sectoral environmental assessment process or other guidelines to clarify what the meaning of those terms of reference is. We're saying we'd like to see that clarification now.

Ms Churley: You would like to follow up, you would like to make sure that the full meaning of EA is included in those terms of reference, that some key components aren't negotiated away at the very top end of the process?

Ms Joyner: Right, maybe with the exception that if those requirements have been fulfilled through another process, say under the Planning Act or through a master plan, that's also acceptable. But the terms of reference should refer to those documents.

1430

Mrs Barbara Fisher (Bruce): My question relates to your predecessor this morning who made a comment with regard to mediation. One of their recommendations was that any findings with the mediation ought to be made public. I would ask you to comment on whether or not you feel that even if mediation is carried out in an in camera session setting, do you or don't you agree that the findings should be public when we're looking at fuller public consultation and input?

Ms Amos: There's been some discussion among our members on that, and we've discussed it with staff as well. I think there is confusion, from reading Bill 76, about the role of the public, which I think is the one you're raising, in terms of mediation and the question of whether or not the public can be a party to mediation, which indeed this bill I believe anticipates, and whether or not the mediation itself should be public and then, thirdly, whether or not the mediation report should be made public. We haven't had an opportunity to canvass our members on it, but if you'd like my opinion, I'd be happy to provide it.

I think you will raise some problems with the prejudice issue for the eventuality of a board hearing, if there is a board hearing. If you make that report public at the same time as you launch into a board hearing, it could cause problems. Right now, the way the bill is worded, the minister will make that report public. We may want more opportunity for the minister's discretion; that if, for example, there are three matters scoped for a board hearing and the fourth was solved by mediation, there's no need to make that mediation report public. If there's new evidence or interesting topics brought out which will be discussed at the board among parties who were at the mediation and who will be at the board, it may be appropriate. It may require some case-by-case determination. But it is problematic.

You'll want to hear from groups which specialize in the mediation field, because it's becoming quite a specialty as to how it works best. There are good and bad reasons to keep it public and keep it private.

Mrs Munro: Thank you very much for your presentation. I wanted to come back to an issue that you raised towards the end of your presentation. You suggested in the area of the terms of reference that you would support some public consultation at that stage. This certainly seems to be an area that has generated a great deal of response by people who have presented. My question is about the nature of the consultation that you would envisage and support. I would like it if you could comment on that and provide some kind of specifics that wouldn't jeopardize any kind of potential confidentiality within the notion of the proponent. Is that an issue?

Ms Amos: I don't think the confidentiality of the terms of reference is an issue at all. Currently I work for a municipality, and when we prepare our terms of reference we do it with the assistance of public stakeholders, provincial agencies, local agencies and so on. It's all wide open. Anyone who calls, anyone who wants to find out about it can. We even put ads in the paper saying that we're thinking of developing terms of reference and would people like to help. Confidentiality, for most proponents, is not a problem. I certainly don't think it's contemplated by the staff at the ministry that this would be confidential.

I am concerned when I hear people referring to, as we've heard this morning, "negotiations" on terms of reference, which somehow makes it sound like it's behind the doors. I don't see it working that way in practice. Terms of reference, as Ann has said, are a work plan. A proponent who is launching a major public project is not going to develop a work plan, other than maybe the first

draft while they get some of their ideas straight and put them out on paper, in any closed-room setting.

I think after that what you will find in practice is that the public, by virtue of their need to comment on it so that they don't object to it at the time on the Environmental Bill of Rights registry when they have the opportunity to object, will be involved. However, we don't feel it would hurt to have that enshrined in a subsection in the legislation. We have a couple of subsections now which talk to the public being consulted about "the undertaking." We feel those could be broadened as well to talk to the public about the entire environmental assessment process, and that could be widened to include the preparation of the terms of reference.

The Chair: I'm sorry, we actually went a little bit over the time. It was very interesting. We appreciate your coming before us and the effort you put into your presentation.

CANADIAN ENVIRONMENTAL LAW ASSOCIATION

The Chair: Next we have the Canadian Environmental Law Association, Mr Lindgren. Welcome, and thank you for taking the time to be with us.

Mr Richard Lindgren: My name is Richard Lindgren and I'm a staff lawyer with the Canadian Environmental Law Association. I'd like to thank the committee for inviting us to appear to speak to this very important legislation.

Some committee members may know that CELA was first established in 1970. We've been particularly active in the area of environmental assessment at both the provincial and federal levels. At the provincial level, we were quite actively involved in the original passage of the Environmental Assessment Act in 1975 here in Ontario.

Since 1975, we have represented numerous residents, ratepayers' groups and public interest groups in environmental assessment hearings and in the courts from time to time. We've also been involved in the various EA reform efforts that the minister mentioned this morning, such as the EA task force report. We commented on that. We were also involved in the public deliberations held by the Environmental Assessment Advisory Committee a few years ago.

I should also mention that I'm a member of the Environmental Assessment Board advisory committee dealing with procedural reform and I also teach environmental assessment law at law school and at university. I'm tempted to say that environmental assessment is my life, but I won't say that because people will tell me to get a life, so I'll just leave that one alone.

We reviewed Bill 76 in quite some detail and brought to bear our extensive EA experience and our unique public interest perspective in terms of what the bill does and what it doesn't do. After reviewing the bill, it's our conclusion that the bill is fundamentally flawed and it should not be passed in its present form. Our recommendation to the committee is that the bill be withdrawn unless it is substantially overhauled to close many of the loopholes, address many of the deficiencies and correct many of the problems that are found throughout the legislation.

I was here for the morning presentations. I heard a similar recommendation made by AMO and the OWMA, and I find myself in strange company echoing that concern, perhaps for different reasons, but I guess environmental assessment, like politics, makes for rather strange bedfellows.

I was also here this morning to hear the minister offer her views on the good things about Bill 76. I heard her response to the questions posed by Mr McGuinty and Ms Churley. It's unfortunate that I couldn't have an opportunity to ask questions. I certainly have lots of questions to put to her.

The first one would be, is she reading the same Bill 76 that I am reading? Because I hear the minister, from time to time, talk about how the bill entrenches public participation rights, increases accountability, ensures full environmental assessment and all the rest of it. In our respectful submission, the bill does nothing of that. It doesn't achieve those worthy objectives at all. I'm not sure which bill she's looking at. It's certainly not the one that's before this committee.

It's our view and it's our experience that the existing Environmental Assessment Act is fundamentally sound. There have been problems. We heard some of them this morning. I'm not here to say that the process is perfect. I'm the first one to tell you that there is a need to update and improve certain aspects of that legislation. It has not been substantially changed since 1975 and it's time to benefit from our experience and to implement the necessary changes. The problem is that Bill 76, as drafted, does not improve the act. It in fact dismantles many of the key provisions and key protections of the existing legislation, and that is why we do not support the bill as drafted.

CELA's many detailed concerns and comments about Bill 76 are contained in our 50-page brief that we filed with the clerk and that's now been distributed to the committee members. I appreciate that the committee is under very tight time constraints and I'm sure you don't have much leisure time to read bedtime reading like this. But if you can't read the full brief, I would commend the executive summary at the beginning. It, in a very concise way, summarizes our key recommendations. It's only about seven pages in length.

If you don't have time to read that, then I would commend to you the document that's also been distributed called, Bill 76 — Questions and Answers. That's something that we put together to provide, on two pages, our essential and most fundamental concerns with Bill 76. I would refer to this as the Coles Notes to our full brief. If you don't have time to read the full brief, read the Coles Notes.

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In my remaining time I don't propose to read into the record any portions or excerpts from my brief. Instead, what I propose to do is focus some verbal comments on the five most problematic aspects of Bill 76, and then I'll conclude my remarks by tabling and briefly discussing the various legislative amendments that we have tabled and put forward for the committee's consideration.

I should note at the outset that our suggested recommendations don't attempt to fix every single problem in the bill, but I think they do go a long way in addressing

some of the fundamental problems with the bill. If they are implemented or something like this is implemented, then perhaps we can salvage something useful out of Bill 76, on the assumption that it does go forward.

I mentioned that I was going to outline CELA's five major concerns with the bill, and to start that off, the first concern is this: Bill 76 does not guarantee that there will be a full environmental assessment for landfills, incinerators or any other environmentally significant undertaking. In short, Bill 76 contains several provisions which allow the minister to essentially vary or dispense with important, essential requirements under the existing act.

We heard my friends from OSEM a few moments ago identify one of those provisions. That's the provision with respect to terms of reference which allows the minister, with a stroke of the pen essentially, to dispense with the requirement to look at alternatives that may be appropriate for the proponent to look at.

That's one example where the minister, under Bill 76, has sweeping new powers to evade or circumvent or undermine some of the important safeguards under the existing legislation. By any objective standard, that has got to be viewed as a rollback, and in my view it marks the demise of sound environmental planning in this province. If you're not going to require the proponent in every instance to look at a reasonable range of alternatives, that's not environmental planning, that's not environmental assessment.

Just to conclude that remark, that rollback — namely, that there will be no guarantee of full EA — is also contrary to various commitments to full EA that have been made by the minister and the Premier. Mr McGuinty this morning read into the record some of those commitments that have been made, and Ms Churley was right when she said that if this bill goes forward as drafted, those commitments, those promises for full EA will have been broken. That is regrettable, in my view. That's concern number one.

Concern number 2 is this: Bill 76 does not guarantee early or effective public participation in the EA process. Again, that's despite comments made by the minister this morning in support of effective and meaningful public participation.

First of all, as the committee has heard many times already, there's no mandatory requirement for upfront public participation in the development of the critically important terms of reference. Those terms of reference, committee members will recall, are very important because they determine the scope and nature and extent of the EA planning process to be followed by the proponent. They're more than just a work plan, as OSEM described it. They are binding, and that is going to be the benchmark to assess the EA that's ultimately produced. Because of the binding and important nature of the terms of reference, it's absolutely imperative that affected or interested members of the public be consulted up front while they're being developed, not after and not through perfunctory EBR registry notices. They have to be involved in a meaningful way up front. That's the first public participation concern under Bill 76.

Another is that although section 6.1 says, "Thou shalt consult interested people," there's no definition of

consultation and no definition of interested person, so we're all left kind of guessing what exactly does consultation mean for the purposes of the legislation and who exactly has to be consulted. Does it mean, for example, that only people living within 120 metres of a proposed landfill site have to be consulted? I don't think that's the intent, but certainly that's a reasonable interpretation of the legislation as drafted.

Finally, under the heading of public participation, I would be remiss if I didn't remark upon the absolute lack in Bill 76 of any requirement for proponents to provide intervenor or participant funding. That type of funding, in my view, is absolutely essential if we're going to have meaningful public participation in the EA process. Without that kind of funding I really cannot take seriously any statement, any assessment, that there will be meaningful public participation under this legislation.

This past April, as committee members will know, the current government allowed the Intervenor Funding Project Act to expire. The government deliberately refused to extend or re-enact that very important legislation, and now we see that the same government has refused to incorporate into Bill 76 any requirements regarding intervenor funding or participant funding. The result is this: Given the absence of those funding mechanisms, many Ontario residents and Ontario groups will simply be unable to effectively exercise their public participation rights under this legislation.

I heard the minister this morning refer to what she understood to be the norm, which is proponents often give out money in advance to people so they can do peer reviews. I've been practising environmental law for about 10 years now and I've been at the EA front lines for close to a decade. That is not the norm; it's very much the exception. Very, very few proponents are enlightened enough to provide that kind of money, and without the requirements in the legislation provided, it will not happen.

The minister also referred to the possibility of receiving a cost award at an EA hearing. I guess that's supposed to be a sop to us all. In fact, very few matters, very few undertakings, get to the Environmental Assessment Board. Only 1% of all projects and undertakings under the legislation actually go to a hearing, and as I'll discuss in a moment, the minister can still deny reasonable hearing requests. There's no guarantee you'll even get a hearing, even for controversial, environmentally significant undertakings like landfills. So to tell the Ontario public, "Don't worry about no intervenor funding; you can get costs at the hearing," in my view is not an acceptable or plausible explanation for the lack of intervenor funding in this bill. Quite frankly, most people will not get to the board under this legislation.

Concern number 3 is this: Bill 76 does not reduce uncertainty or unpredictability within the EA process. In fact, to the contrary, it adds uncertainty and unpredictability to the process and it does so by essentially over-politicizing the EA process. I have reviewed the bill and I have counted at least 36 different discretionary powers that are being conferred upon the minister and the director — 36 different discretionary powers in a bill that

probably only has 30 sections. That's got to be some sort of legislative record.

The problem is that while there may be a need for some discretion, there are no substantive or detailed or specific criteria in the bill to help structure the exercise of those criteria and to help ensure some accountability when decisions are made. As well, you will see that often where these discretionary decisions are going to be made, they're not required to provide upfront public notice for comment opportunities.

A lot of these decisions will be made by the minister or the director or some designate behind closed doors, without public input and without any meaningful criteria. That, to my mind, does not lend itself to accountability, predictability. What it's going to result in is case-by-case discretion, which is going to be very hard to really analyse and predict with any kind of measure of confidence.

The problem here is that there is virtually unfettered discretion being given to the director and to the minister and also, incredibly enough, the minister has sweeping new powers to delegate most of those powers, those discretionary decisions, to other people, other ministry officials. As far as I can tell, people who are not even employees of the provincial government could potentially receive delegated powers under this legislation. Where is the accountability in that? Where is the predictability?

Comment number 4 is this: Bill 76 places unjustifiable constraints on the availability, scope and independence of EA board hearings. First of all, as I mentioned a moment ago, you may not even get an EA hearing under this legislation. The minister can refuse to send matters on to a hearing even where the request comes from the public and involves a particularly significant or controversial undertaking.

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I don't think we have to look any further than what happened a couple of weeks ago with respect to the proposed Taro landfill in Stoney Creek. It's a proposal to establish a very big landfill in a quarried-out pit near the Niagara Escarpment. I cannot think of a more controversial, more environmentally significant undertaking that should go to a hearing, and yet the minister said no to a hearing. That kind of thing will continue under this legislation. So let's not pretend we'll get environmental assessment hearings under Bill 76. They will be a rare bird indeed.

But even if we got a hearing under Bill 76, as the committee members now know, the minister has the power to dictate what matters get heard by the board, what testimony gets heard by the board, how long the hearing will take and so forth. This is all despite the fact that the ministry is a party to the hearing and can still dictate what's happening. It can sweep the contentious issues right off the table.

In my view and in the view of the Canadian Environmental Law Association, the right to request and receive a hearing under the Environmental Assessment Act is a fundamental right that should not be taken away except in the rarest of circumstances, namely, where the hearing request is clearly frivolous, vexatious or made for the

purposes of delay. That's the test that should be incorporated into Bill 76.

As well, we do not support the ability of the minister to scope, constrain or limit what happens before the board. The board and the parties are best equipped to do that, particularly if the terms of reference are working. These issues should be identified and scoped long, long, long before it gets to the board.

Fifthly and finally, the class EA regime established under Bill 76 falls way short of the mark. This is a particularly significant point because, as OSEM pointed out a few minutes ago, most EA activity occurs under class EAs that have been approved under the existing legislation. The problem, in my view, is that the Bill 76 class EA regime suffers from many of the same problems that the individual EA regime suffers from, namely, lack of upfront consultation on the class terms of reference, ability to deviate or dispense with essential EA requirements.

But I guess in the class EA context my most fundamental concern with part II.1 of the legislation is the refusal of the government to put in place provisions in Bill 76 which limit class EAs to truly minor projects. Now class EAs evolved in this province to ensure that there are streamlined EA requirements for minor projects that recur frequently, are similar in nature, are minor and predictable impacts that are subject to mitigation. That was the whole rationale for having streamlined EA. So you can get approvals for municipal road extensions or sewer works and so forth in a relatively efficient fashion.

There's no attempt in this legislation to limit classes of undertakings to things that are minor and have predictable and limited environmental impacts. So under Bill 76 there's nothing to stop the minister from approving a class EA for a whole collection, a whole class of undertakings that are otherwise quite environmentally significant. There's nothing in this legislation that would prevent the minister from approving a class EA for landfills, incinerators, nuclear generation stations. The list goes on and on. That is a travesty. Those are things that do require individual environmental assessment. So if the committee's going to do anything about class EAs, it's got to ensure that there are provisions in Bill 76 which limit the scope of the types of undertakings that could be subject to class EA.

In a nutshell, those are our five main concerns about Bill 76. I'd be happy to take questions about them.

Let me conclude by briefly discussing CELA's recommended amendments to Bill 76 and that's the document entitled, surprisingly enough, CELA's Recommended Amendments to Bill 76.

Now I'm not a legislative draftsman. There's no magic in the language that's used here. I sat down yesterday afternoon and started to put into legal language the types of amendments that would have to be implemented into Bill 76 to make it acceptable. As I say, I don't profess to be a legal draftsman, but the intent is clearly here and if there are better ways to get at the intent behind these provisions, I'd certainly be happy to discuss them.

There are 20 amendments that we've put forward. Without taking any time I would tell you that there are

five that are probably most critical, and I'll conclude on this remark. The most critical amendments, in my respectful submission, are as follows:

Item 4 at the bottom of page 2 fleshes out and improves the terms of reference process. Those are the types of amendments that are necessary to salvage something useful out of the terms of reference, because our suggested rewording deals with public participation, the need to ensure full compliance with existing essential EA requirements and so forth. I would commend section 6 or something like our redraft of section 6 to the committee for its consideration.

The next critical amendment is number 5 at the bottom of page 3, which fleshes out what public consultation really means and should mean under Bill 76.

The next critical one I would highlight for the committee is item 7 at the bottom of page 4, which recommends the deletion of subsection 6.2(3), which is part of the legislative provisions which allow the minister to dispense essential EA requirements at the terms of reference stage. That provision has got to go.

Then flipping over to page 5, item 10, you'll see a number of subsections within section 9 have been earmarked for deletion. Those are the ones that allow the minister to unnecessarily constrain the scope of the EA hearing and what can happen at the EA hearing. Those have got to go, in my respectful submission.

Then on the very last page you'll see some of our comments about class EAs. This is item 18 at the top of page 8. Quite frankly, class EAs are so important to the overall structure and administration of the EA program that we've got to make sure we do it right. So our primary recommendation is just to delete the existing part II, go back to the drafting table and come up with something that's more useful and more effective in terms of ensuring public participation and consideration of EA requirements.

That's the point I'll conclude on. It's taken a long time to reopen the EA act. It's been 20 years since it has been passed and it may be 20 years before we get another crack at it. I would urge the committee to exercise, as I'm sure it will, caution in terms of the amendments it may propose or put forward because EA is important. Environmental assessment legislation that we have in Ontario is arguably our most important environmental protection and it helps protect us against bad landfilling decisions, bad siting decisions with respect to incineration.

This is critically important legislation. I'm pleased to see that the committee's going to be dealing with it, but let's think long and hard about what we do. Let's come up with the best legislation possible because we're going to be stuck with it. My children will be stuck with it and your children will be stuck with it for a long time. I'll end on that note, subject to any comments.

Ms Churley: First, let me clarify, Mr Lindgren, that despite the beefs with the past NDP government, you are willing to answer my questions today, are you, unlike Mr Taylor from the OWMA?

Mr Lindgren: That's correct.

Ms Churley: Okay. I wanted to ask you to clarify for the committee why looking at alternatives — I said this

morning I see it as the heart of the EA and that of course has been ripped out, given the discretionary powers of the minister now, and obviously it's not going to be a major component in many instances. Can you explain to the committee so that we all fully understand why that component is so important to the process?

Mr Lindgren: The strength of the existing legislation is subsection 5(3) which has, I guess, been replicated in subsection 6.2(2). That is the section that requires proponents to take a long, hard look at various things like alternatives to the undertaking, alternative methods of carrying out the undertaking, the advantages and disadvantages of the alternatives, the various biophysical and social economic impacts and so forth. What does all that really mean? It means that the proponent is directed by law to come up with an environmentally preferable solution to a perceived problem or opportunity.

That's the difficulty I have with Bill 76. It would allow a proponent to say: "I'm not going to look at alternatives that may be better or safer for the environment or sites that provide better groundwater protection. I'm not going to deal with that. I want that site because I own it now. That's where I'm going to build. Let's get on with it." That's not environmental planning. By allowing that to happen, you're losing the rigour, the comprehensiveness and the various environmental benefits of full environmental assessment. That's why the act was passed; that's why alternatives are important; that's why we cannot lose that under Bill 76.

1500

Ms Churley: An example, for instance, as I brought up this morning, is that in an incineration proposal, not looking at the 3Rs in that context would be a problem because of the competition and the conflict between the materials that are used for both. Would you consider that to be a prime example of where alternatives would need to be looked at?

Mr Lindgren: Absolutely. There seems to be a sense among some people that EA is essentially a site-specific impact analysis: You just look at where the fallout's going to occur and that's the end of it, that's all you have to look at. But in fact siting an incinerator has more profound resource implications than simply the toxins that will be coming out of the stack. It will, for example, be competing with the resources that are currently within the waste stream or the 3R stream. Those kinds of things have to be taken into account if we're going to make an informed, rational decision about whether an incinerator should be approved.

Mr Trevor Pettit (Hamilton Mountain): Mr Lindgren, I guess it's safe to say that in your role with CELA you must have some familiarity with EA acts throughout Canada.

Mr Lindgren: I have from time to time looked at various other jurisdictions.

Mr Pettit: Could you give us a brief overview as to how you would compare Bill 76 with the acts you're familiar with in other provinces?

Mr Lindgren: I would start the comparison by looking at how Bill 76 compares to what we now have at the federal level, because that's probably the most current environmental assessment reform to come down the pike

and a lot of people look to that as a model. Unfortunately there are a lot of bad similarities between Bill 76 and what we see at the federal level. In fact, those of us who practise EA law sometimes say that Bill 76 in essence reduces Ontario's process to the level of the federal process. The federal process, in my respectful submission, is not very rigorous at all. It's not something to attain or aspire to, yet that's where Bill 76 seems to be heading.

In terms of other jurisdictions, I think a comment I make in my brief is that I've always regarded the Ontario legislation as perhaps the strongest EA legislation — the existing legislation, that is — because we have the opportunity for independent review and approval by the Environmental Assessment Board, which makes a binding and enforceable decision. No other jurisdiction does that. That is, I think, the strength of our process. We've got an independent decision-maker that can look at this stuff.

The problem with our regime — and other jurisdictions do a better job of this — is that we don't seem to apply it very often to private sector undertakings. I think other jurisdictions do a better job at ensuring that environmentally significant private sector development gets assessed in a rigorous process. We don't really do that. Under our regime, private sector development is exempted unless it's specifically designated as being subject to the act.

Mr McGuinty: I apologize for not being here at the outset, Rick, but thank you very much for your presentation and for your ongoing support. I know you've put a lot of work into this and I appreciate that.

One of the things I asked the minister this morning was what she planned to do to ensure there was public notice given with respect to the terms of reference and to allow opportunity for public input into that, and she suggested that she might post on the Environmental Bill of Rights. Let's discount for a moment that there may very well be legislative hurdles to doing that and let's discount for a moment that I think only 30% of Ontario households now have personal computers in them, and I'm not sure how many of those are on the Internet and I'm not sure how many people are going to make their way to the library to get on to the registry. Practically speaking, what's the missed opportunity here? That's what I'm driving at. What is the missed opportunity here if we don't get people involved at the outset with respect to drafting terms of reference?

Mr Lindgren: Not involving people at the outset is a recipe for delay and controversy and litigation. That's the price you pay by excluding interested and affected people at the very outset. I listened to the minister with great relish this morning as she was touting an Environmental Bill of Rights registry as the way to let people know that this stuff is happening. I was on the EBR task force. I drafted the legislation, or helped draft it, I guess, and it is an important way of providing notice to the public, but the EBR itself recognizes that the registry is a minimum form of notice. It is not the all-inclusive way to get people involved. Not everybody has a computer or a modem and can tap into the registry.

There are other more practical, more efficient, more traditional ways to get people involved at the terms-of-reference stage, like mailouts, door-to-door campaigns,

newspaper notices, open houses. Those kinds of things that can be done and have been done under the EA process need to be moved forward in the process so that people do have a meaningful opportunity to get involved at the earliest possible stage.

The Chair: Mr Lindgren, thank you kindly for your time and for your presentation here this afternoon.

CANADIAN INSTITUTE FOR ENVIRONMENTAL LAW AND POLICY

The Chair: Our next witness is the Canadian Institute for Environmental Law and Policy, Mr Winfield. Welcome.

Mr Mark Winfield: My name is Mark Winfield. I am director of research with the Canadian Institute for Environmental Law and Policy. The institute is a not-for-profit, independent environmental law and policy research and education organization founded in 1970 as the Canadian Environmental Law Research Foundation. CIELAP has been involved with the environmental assessment process and its formulation in Ontario since its origins with the green paper on environmental assessment in 1973.

In 1986, CIELAP's predecessor, the Canadian Environmental Law Research Foundation, completed a comprehensive landmark study of the environmental assessment process in Ontario entitled *Environmental Assessment in Ontario*. I'm going to file a copy of this report with the clerk so it's available for reference by members of the committee. It's a very comprehensive review of the act, and I think although done more than 10 years ago, it's still very relevant to the issues which are before the committee today with the Bill 76 amendments to the bill.

With respect to Bill 76, it's become clear over the last few years that reform is needed with respect to the environmental assessment process in Ontario, but Bill 76 is in our view a disappointment in the sense that it doesn't reflect the kinds of recommendations for reform which were made by the Canadian Environmental Law Research Foundation or more recently by the Environmental Assessment Advisory Committee.

Unhappily, we take the view that the proposed amendments seem to us likely to weaken the process significantly as an environmental planning procedure. Indeed, they seem likely to produce a more, not less, uncertain and inconsistent process by introducing such a large amount of discretion in the hands of the minister and her officials in terms of the application of the act, the content of environmental assessments, the provision and content of public hearings under the act, and elements like the right of the minister, which is being introduced through this bill, to reconsider environmental assessment decisions.

In our view, before this bill proceeds, it is in need of major revisions. In fact, you will see from our brief that we've recommended no less than 37 separate amendments to the bill.

I'm going to focus my remarks on a number of key aspects of the bill which I think deserve committee members' particular attention, and there are seven in

particular I'd like to address. I'll deal with them largely in the order in which they appear in the bill.

The first one is the question of harmonization. That is the situation where the environmental assessment requirements of more than one jurisdiction might apply to a particular undertaking. In the case of Ontario, it would be a situation where the federal government's environmental assessment process would apply to a project as well as the Ontario process.

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We're concerned by the approach which is proposed in the bill, which is essentially to dispense with elements of one or the other level of government's requirements for such assessments. We find this particularly surprising in Ontario, given that we already have a model for dealing with situations where you may have more than one assessment process applying to a particular undertaking. I think particularly of the Consolidated Hearings Act, which was enacted in 1981.

We think what we should be attempting to do with Bill 76 is to seek the consolidation of the requirements of both levels of government into a single process which meets the requirements of both levels' legislation. In terms of particular amendments to Bill 76, it means that the element of the bill in section 3.2 dealing with this issue should be amended so that where the requirements of more than one jurisdiction apply to an undertaking, the requirements of the Ontario process should only be dispensed with where equivalent requirements are applied under the other jurisdiction's legislation. In addition, we believe there must be provisions made for public consultation in the development of joint assessment processes.

The second aspect of the act which I'd like to focus on, and one which has drawn a lot of attention, is the question of the introduction of the notion of terms of reference in terms of the definition of the scope of particular environmental assessments. This causes a great deal of concern, as it seems to have the potential to remove a number of key requirements from the environmental assessment process; in particular, the elements related to consideration of need and the consideration of alternatives. In effect, what is proposed is to replace the current provisions of the act which say that all environmental assessments have to consider the rationale for the undertaking and the availability of alternative means of meeting that need and to replace that structure with a process whereby terms of reference for the content of each assessment will be negotiated between the minister and the proponent.

In our view, this introduces a number of problems. It seems to have the potential to dispense with key elements of the process. In addition, it seems to have the potential to add less certainty, not more, to the assessment process, as the content of each individual assessment will now be determined on a case-by-case basis.

In our view, we don't object necessarily to the notion of the development of terms of reference in relation to environmental assessments, but we believe they should indicate how the basic requirements of the act will be met and not whether they will be met. In addition, we believe there must be provision made for public consultation in

the development of terms of reference around environmental assessments. We think that's absolutely essential.

A third issue which I would like to draw committee members' attention to is one that Mr Lindgren just mentioned in his previous presentation, which is the issue of the potential for the limiting of the scope and content of Environmental Assessment Board hearings by the minister. We are very seriously concerned by the proposal to give the minister the power to limit the subjects on which the board can hear evidence or to impose time lines on the board for its hearings.

In our view, this raises serious concerns about fairness. It seems to us an invitation to judicial review of board decisions, as there are obvious grounds for arguing that the board did not have the opportunity to hear essential evidence or did not have time to hear essential evidence. In fact, the bill itself in a sense recognizes this, because it actually tries to make a provision which cuts off the possibility of people seeking judicial review of board decisions on this basis. In our view, these provisions simply should be deleted. It's the best way to deal with them.

I would also like to draw committee members' attention to the issue of class assessments. As a number of witnesses have said, class environmental assessments have become an essential part of the environmental assessment process in Ontario, but oddly enough, there is no statutory basis for the conduct of class assessments in the existing act. In a sense we welcome the step that there's some effort to provide some basis, but at the same time we're concerned by the content of what is before us.

In particular, we believe the bill needs to provide some very clear criteria about what can be included in class environmental assessments. As Mr Lindgren said, as the bill is drafted now, anything could be put into a class assessment: landfills, incinerators, nuclear power plants. In our view, the bill should be amended to limit the use of class assessments to activities with minor, well understood, mitigable environmental impacts and around which there is a low level of public interest.

In addition, we are concerned that the bill's provisions around class environmental assessments do not include certain key elements of the general assessment process, and in particular consideration of the rationale and the availability of alternatives to the undertakings which are proposed to be dealt with under class assessments.

We're also concerned that there seems to be quite a serious omission in that there doesn't appear to be any provision for public hearings being conducted in relation to class assessments, and clearly this issue has to be dealt with. Class assessments should be potential subjects of hearings.

With the general provisions of the act, we believe the minister should be required to grant hearings, unless the request can be shown to be frivolous, vexatious or made solely for the purpose of delay.

We also believe that there need to be criteria and a clearer process provided for dealing with situations in which people ask for the bumping up of undertakings from being dealt with under the class environmental assessment process to being dealt with under an individual assessment.

The fifth thing I'd like to draw members' attention to is the question of the introduction of provisions around the development of policy guidelines in relation to environmental assessment. This reflects, to a certain degree, recommendations made by the Environmental Assessment Advisory Committee. We find it somewhat surprising that the way the bill is presently worded, these guidelines are only targeted at the Environmental Assessment Board. One would think that in order to be consistent with the Planning Act process and policy guidelines made under the Planning Act, any policy guidelines made under the Environmental Assessment Act should apply to proponents and be considered by the board and the minister in their decision-making under the act.

The other surprising thing with respect to the notion of policy guidelines is the absence of any provision for public consultation in the development of these policy guidelines. Clearly there needs to be provision made for that in terms of public notice and comment periods, and requirements that the minister respond in some way to whatever public comments are received.

Sixth, the issue of public participation, and specifically intervenor funding, has been raised already by a number of witnesses. In general, we welcome the references in the bill to public consultation and the availability of mediation, but in order for the provisions to be meaningful they need to be applied throughout the bill, in particular in relation to public consultation. The particular vehicles and forms of consultation which must occur have to be specified in the bill, and that would essentially follow the model of the Environmental Bill of Rights.

With respect to intervenor funding, it's clear — a number of witnesses have already drawn attention to this — that with the expiry of the Intervenor Funding Project Act in April of this year, public interest intervenors, be they individual citizens, community groups, citizens' groups, public interest organizations, are going to face enormous barriers in participating in the environmental assessment process. We find it very disappointing that the government has not taken the opportunity of the consideration of Bill 76 to address this issue meaningfully.

Finally, there are a number of issues to which I'd like to draw the committee's attention because they reflect the degree to which, in our view, Bill 76 is a lost opportunity, in the sense that there are a number of long-standing issues with respect to the environmental assessment as a process in Ontario, which were identified as far back as when the act was first enacted in 1975, that are not addressed by Bill 76.

The ones that come to my mind most immediately include the question of the application of the act to private sector undertakings. Ontario is currently the only jurisdiction in Canada which makes a distinction between public and private sector undertakings in the application of its environmental assessment legislation.

The issue of the application of the act to government policies and programs should be addressed. Consideration of cumulative effects and the integration of an ecosystem approach to environmental assessments in the environmental assessment process should also be considered. Provision should be made for the monitoring and enforce-

ment of the implementation of terms and conditions that are imposed on approvals made under the act. This should relate both to approvals granted and also terms and conditions imposed on exemptions granted under the act.

Finally, we believe that the committee should give serious consideration to using this opportunity to re-establish the Environmental Assessment Advisory Committee. This committee was abolished by the minister this fall. In our view, this was perhaps a hasty move in the sense that the committee had been a very important and very useful and well-respected source of independent advice to the minister on Environmental Assessment Act exemption requests, and also of advice on the reform of the environmental assessment process itself.

I think I'll conclude there and would be pleased to answer any questions which members may have.

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Mr Stewart: Thank you, sir, for your presentation. I have two concerns and two problems with the way the hearings have gone on in the past. One is the time element, and one is the cost element.

If I heard you right, what you're suggesting is that there should not be any time lines and that any issue whatsoever should go before the hearings. When I look at some of the hearings over the past number of years that have exceeded two years, I have a little difficulty with that. Surely to goodness we can put in some type of guidelines that can protect what we want to protect but get on with the job. The only people who really benefit on this thing are those being employed to carry on these types of hearings for this length of time. To me, if you don't put in some type of restrictions it just goes on forever and you get nothing done.

I'd like you to address why you feel there should not be some type of control, guidelines, whatever, and limits on this.

Mr Winfield: I think trying to impose them through the hearing process itself, using the legislation, is a very heavy-handed way of doing this, and I think it does raise some quite serious problems about procedural fairness in the sense of directing the board to take issues off the table or directing it to complete its hearings within set time frames. I think those are invitations to judicial review of board decisions on the basis of fairness.

The board probably does need, in its own procedures, to be more vigilant about the issue of relevance of the evidence which is brought before it, and there have been some steps taken towards trying to make the process more efficient. Everyone recognizes there were problems with the OWMC assessment and the timber class EA where the hearings went on for years and years. We need to look at the board procedures in the way in which it deals with evidence — in that forum, though; it's really partially a management problem for the board itself — and then the other factor is that there are some elements in terms of providing more focus in the assessment process which might be used to try to provide more focus in board hearings.

I think the introduction of the notion of mediation through this bill is a more constructive way of trying to get at that problem in the sense of trying to find ways to

winnow down what actually goes before the board as being real issues in contention, as opposed to things that might have been settled in a non-quasi judicial forum.

Those are other mechanisms which the bill itself contains which might provide better and less heavy-handed ways of dealing with trying to bring the length and scope of board hearings under control.

Mr Stewart: Do you not think that if you put in some type of controls or limitations or time elements it may force — I guess I could use that word — the people involved to arrive at some decisions without it just going on and on? It doesn't matter whether it's only at the hearings, whether it's changing criteria, whether it's these waste management master plans that keep being changed with no limitations on. You know when you look at some of the costs that have been incurred in this province over the last eight or 10 years and we have got no place in terms of looking after our waste other than some of the three Rs etc. We've got to do something, do you not feel, to try to push this on to some type of a completed form some time?

Mr Winfield: Yes, there have to be end points in the process, and there are now. In the view of an awful lot of commentators on the process, part of the problem has been that for some of the more problematic hearings in particular — one thinks of the timber EA, the OWMC hearing, some of the waste management hearings — the hearings and the process have been occurring in a policy vacuum on the part of the government, so that major policy issues are having to be resolved by the board in the hearing process. That inevitably leads to very long hearings because the board has been, more or less, left to solve these things on its own. The hearing process before the board may not be the ideal forum for trying to deal with that, but in the absence of anything else, that's what's grown up.

With respect to the issue of waste management, one has to look at this carefully. We would like to raise a very fundamental question, one which is probably at odds with the view taken by the OWMA. The government needs to ask itself, does it really want to make it that much easier to get a landfill approved in the province of Ontario? We're talking about undertakings which by their very nature have enormous environmental impacts in terms of surface waters, groundwaters, air emissions, surface disruption, noise, nuisance. Do we really want to make it that easy, particularly when making it somewhat difficult to get landfill approved provides some very powerful incentives for municipalities and waste generators to undertake all kinds of measures to try and divert waste from landfill and to reduce our need for those kinds of facilities?

Mr Stewart: Waste management doesn't just mean landfills.

The Chair: Mr Stewart, your time is up.

Mr McGuinty: Thank you very much for your presentation. Just for the record, I want to state as well that as the environment critic for my party, I've always found the materials put out by your organization extremely helpful and I would recommend their reading to all members of the committee. They don't have to agree with everything that's in them, but they are very useful as a resource.

I want to talk to you a little about the provisions found in the bill which enable the minister to scope the hearings. Tell me, if you would, please, practically speaking, what this might mean. Why don't I leave it at that.

Mr Winfield: I think you mean with respect to subsection 9(3) in particular.

Mr McGuinty: Exactly.

Mr Winfield: What it means in effect is that the minister can take issues off the table for consideration by the board, and this could be any one of a number of issues which may be very important to some of the intervenors. One could imagine that the minister could say, "The board doesn't have to hear testimony and consider issues related to the need for the undertaking, or the availability of alternatives, or need to consider questions related to a particular dimension of the environmental impacts of the undertaking under review because we've decided that those are" — in fact, it's not even limited to things which have already been resolved; it's purely at the discretion of the minister.

The wording is, "The minister may direct the board to hear the testimony concerning only those matters that the minister specifies," so anything could be taken off the table, including the most contentious issues. It also limits the board from hearing evidence on issues which might actually arise during the hearing and which may actually emerge as being quite critical to the evaluation of whatever's under review. That's just ruled out if the minister exercises this right.

Mr McGuinty: I'd ask you to step back and look at the big picture for a moment so the committee members better understand. Could you comment on our reputation internationally as a jurisdiction vis-à-vis the environment? The general thinking, and it's not without some basis, is that environmental regulation constitutes a very real impediment to economic development in the province and that the best way to promote economic development would be to get rid of or to lessen that regulatory burden.

One thing I can think of off the top of my head is that about 30,000 people in this province are employed in the environmental technology sector, the fifth-largest employment sector in the province, who in a very real sense owe their living to the fact that regulations in this province relating to the environment acted as a real catalyst to promote the development of that industry and we're now considered experts on a worldwide level. But just where have we stood so far internationally?

Mr Winfield: In terms of Ontario's international stature, certainly in the last decade but even in some ways extending further back than that, into the period of the Davis government and even the Robarts government, Ontario has been one of the leading jurisdictions certainly in North America and probably throughout the OECD in terms of environmental standards and environmental regulations, in the strength of the standards, the sophistication of the institutional infrastructure within the Ministry of Environment and Energy and other organizations like the conservation authorities.

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That historically has been the record, and one result of it has been that we have developed a fairly strong environmental industry sector. Certainly the literature

around that kind of industry is very clear that demand for products of the environmental industry is driven by the strength of regulations in the domestic jurisdiction and that high domestic jurisdictional regulations are very important in obtaining export markets for environmental technologies.

This is a point that's been made by people like Michael Porter and Nicholas Ashford and a number of other academics who have studied this very carefully. There is growing concern within the environmental industry sector within Canada — this doesn't just apply to Ontario, but to other jurisdictions too — that as certainly forward movement on environmental standards is slowing and as we're seeing a very clear backsliding in a number of jurisdictions, domestic demand for environmental technologies and environmental services is drying up and that's also having a secondary effect of gaining access to export markets very difficult as well.

Ms Churley: Thank you for your presentation. It was quite useful, good information. I just want to make a comment about the distinction that you said Ontario makes between private and public proponents in terms of the undertaking. I consider this is more urgent now under this particular government because of its obvious direction vis-à-vis privatization. I just wanted to make that comment. That's all the more reason why we should amend this bill now to include the private sector undertakings as well.

I want to ask you, however, about the time frames, because that is an issue that continues to come up and will continue to come up. It's my understanding that the government review time is the stage where most delays occur at this time. That's why I think under certain conditions mediation makes sense, with provisos which I don't have time to go into now. To try to speed that up, I think it could be quite helpful.

My concern is, though, that I don't think any or hardly any of these stated objectives of the government are actually going to work with this particular act. I think with the 750 layoffs that have already taken place and the \$200-million cut to date from the ministry there are going to be fewer staff for the government review, and also because there's so much discretionary power to the minister and to the staff and there's so much confusion up front: how the terms of reference are going to be done, how long that is going to take, how long the consultations then with the public are going to take, who the public is, all that stuff. It occurs to me that if you combine the two, it could take even longer than it is taking now to get through the entire process.

Mr Winfield: I think that's a real possibility. With respect to the government review process in particular, one point that my predecessors made in this report was that the biggest source of delay wasn't the hearings; it was the government review process and what went on there. Clearly, as resources are shrinking among all the agencies involved in the review process, that's likely to introduce further delay and also likely to diminish the quality of the comments which come forward. What you're likely to see is that most of the other agencies will essentially drop out of the government review process because they won't have the resources and they won't

have the time to make contributions. I think that could be quite a serious loss when you're dealing with agencies like conservation authorities and the MNR, where you've got a lot of expertise about natural resources and that kind of thing which is just going to be removed from the process.

The other thing specifically on the government review part: There is a source of concern in the bill too in the sense that it does talk about prescribing time lines for the government review process but it doesn't specify what those time lines might be. The rumour we've heard has been 45 days. You also have to keep in mind that the government review process is occurring parallel to the public review process, so whatever time constraints are put on the government reviewers are also imposed on members of the public who might want to comment on an assessment as well. If you cut the time line too short you'll reach a point where it simply becomes impossible to comment meaningfully on any of this. Sure, things speed up if you impose those kinds of time lines, but one has to ask all kinds of questions about the quality of the decisions which would emerge from the process as a result.

The Chair: Mr Winfield, thank you kindly for coming and testifying here this afternoon before our committee.

STOP ENVIRONMENTAL DEREGULATION IN CANADA

The Chair: Our final witness of the afternoon is Stop Environmental Deregulation in Canada. Welcome this afternoon. Thank you for appearing before us.

Mr Doug Macdonald: My name is Doug Macdonald. With me are Mr Sol Chrom and Ms Andrea Mozer. I appreciate the fact that you're coming to the end of a long, hot summer day and that everybody in the room may be a wee bit tired, so we will try and be brief and direct. What we would like to do in terms of a format, if this is acceptable to you, I'm only going to speak for a couple of minutes to introduce the representatives of Stop Environmental Deregulation in Canada and to give you the two-minute summary of our presentation. The actual presentation is going to be made first by Andrea and then by Sol, then we're open to questions and comments and discussion.

I teach environmental policy and politics at Innis College at the University of Toronto and at the faculty of environmental studies at York University and I'm in the process of completing a PhD in environmental policy at the faculty of environmental studies. Mr Chrom is a lawyer who has recently completed a master in environmental studies at the faculty of environmental studies at York University. Ms Mozer is in the process of completing a PhD in the area of environmental policy at the University of Toronto in the department of political science.

We also have with us a couple of other representatives of our organization: Mr Yasuo Ikari, who has recently completed a master in environmental studies at York and this fall will be going to the United States to undertake PhD studies in environmental policy, and Ms Jennifer Morrow, who is a student in the master program, also at the faculty of environmental studies at York University.

Stop Environmental Deregulation in Canada, as you can see, is an organization which has been created very recently, largely representing graduate and undergraduate students in the area of environmental studies. The name pretty much tells you the mandate and concern of the organization, but we'll be elaborating on that in the brief.

If I were to take just a minute and give you the overview summary of what we would like to say to the panel today with respect to Bill 76, I would do it by posing two questions to the panel, and the answers to both of these I think are self-evident: First, what is unique about the Ontario Environmental Assessment Act in comparison to other environmental legislation; and second, what is unique about this Ontario government in comparison to all other Ontario governments since we began to establish an environmental protection regime in the 1950s and the 1960s, and then what happens when you put together those two unique characteristics?

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The answer to the first question, as you know, is that the unique characteristic of the Environmental Assessment Act is a requirement to consider alternatives. All other environmental legislation simply provides for a licensing system which imposes some form of standards on the regulated industry or municipality which has that licence. Environmental assessment is unique because of the fact that it is a planning tool, a planning mechanism to allow a consideration of alternatives.

Secondly, what is unique about this government? This government is the first, since the time of Leslie Frost and John Robarts, to actually weaken our ability to protect the Ontario environment. We will be giving some examples, but you are as aware as I am that this government is embarked on a systematic agenda of limiting and reducing our ability to protect the Ontario environment.

When you put these two together you have Bill 76 which, as many of the representatives appearing before you have pointed out, allows a proponent to receive an Environmental Assessment Act approval without having done a full assessment through the terms of reference provision, and then you have a government which has demonstrated that it is not interested in environmental protection, that it has other priorities, that it is interested in reducing environmental protection. We can only conclude that this bill is environment deregulation, that it is doing away with the unique possibility of consideration of alternatives. That leads us to our recommendation that this committee recommend that this bill be withdrawn and that this committee take a further step and recommend to this government that it stop environmental deregulation.

That is the summary of our comments. I'll now turn the floor over to my colleagues to present our more detailed submission.

Ms Andrea Mozer: The following constitutes the submission of Stop Environmental Deregulation in Canada, SEDIC, to the standing committee on social development regarding Bill 76, An Act to improve environmental protection, increase accountability and enshrine public consultation in the Environmental Assessment Act. It sets out who we are and why we are concerned with the deregulatory actions of the Mike Harris

government, it provides comments on Bill 76 and, finally, provides our recommendations to this committee.

Who and what is SEDIC? Stop Environmental Deregulation in Canada is a very new lobby group formed by environmental studies students and other environmental professionals who are deeply concerned by actions being taken by the Ontario, Alberta, federal and other governments in Canada which are drastically reducing our ability to protect the natural environment. The Canadian and Ontario systems of environmental law were put into place in the early 1970s. Since then, successive federal and provincial governments have introduced tougher standards and brought in new measures to ensure public consultation and access to decision-making. Although progress may have been slow at times, the direction which we were moving in was always towards increased environmental protection.

Now all that has changed. The Chrétien and Harris governments are moving backwards towards decreased environmental protection. Laws which protect our environment are being dismantled. Rights to participate in environmental decision-making are being taken away from Canadians. Governments, particularly in Ontario, are abandoning their responsibility for environmental protection. Bill 76 is part of that process.

SEDIC was formed initially in January of this year by students in the faculty of environmental studies, York University, and quickly expanded to include environmental studies students at the University of Toronto, Trent and the University of Waterloo. Our mandate is to identify and publicize environmental deregulation by governments in Canada. We are working to galvanize public opinion, alerting citizens to the fact that their elected representatives are dismantling Canada's federal and provincial environmental protection regime. Our objective is to force those representatives to pay the political price which inevitably will accompany environmental deregulation.

We are working to achieve the following policy goal: Prime Minister Chrétien and Premier Harris must state explicitly, in writing, that their governments will not take any further actions which will weaken our ability to protect the Canadian environment.

In the past year, the Newt Gingrich Republicans in the US have slipped dramatically in popular support, in large part because of their efforts to deregulate in the area of environment. The same thing will happen here in Ontario. A majority of Ontario citizens oppose environmental deregulation. A poll conducted by Synergestics Consulting in December 1995 found that 78% of Canadians believe that "strict environmental regulation must continue in the midst of recession" and that 43% of Canadians believe that protecting the environment is more important than protecting the economy; 41% think that they are equally important. SEDIC exists in order to publicize, in this province, the deregulatory actions being taken by the Mike Harris government and thus mobilize the latent opposition represented by these polling results.

You ask what environmental deregulation is. SEDIC defines environmental deregulation as any change in environmental law, regulation, policy or enforcement that results in any of the following: (a) an increase in the

amount of pollutants released into the air, soil or water environment in Canada; (b) a reduced capacity for public participation in environmental decision-making; (c) a decrease in the amount of land set aside for the protection of wildlife, wilderness and parks; (d) an increase in Canada's environmental debt and deficit, defined as actions taken today which impose environmental remediation costs on the future; (e) the squandering of governmental, public and business resources which have been invested over the last quarter century in protecting the environment; or (f) any other change that results in decreased capacity of governments or citizens to protect the environment.

SEDIC views environmental deregulation as a serious and shameful threat to the health of the people of Ontario, the other species with whom we share this land and to the future of our children and grandchildren. We view it as a sacrifice of the long-term needs of the many for the short-term benefit of a few.

Mr Sol Chrom: I'll just pick up there. Bill 76 does not improve environmental protection, increase accountability or enshrine public consultation in the Environmental Assessment Act. Rather, it will reduce the capacity of the government and people of Ontario to protect the environment, the health of Ontario citizens and the future for our children and grandchildren. For these reasons, Bill 76 is a prime example of environmental deregulation.

More importantly and specifically, Bill 76 makes it possible for a proponent to receive environmental assessment approval without undertaking a full environmental assessment. I might add that this is contrary to commitments made by Premier Harris with respect to waste management. This is because Bill 76 provides for "terms of reference governing the preparation of an environmental assessment" that shall be approved by the minister "if the minister is satisfied that an environmental assessment prepared in accordance with them will be consistent with the purpose of this act and with the public interest."

However, Bill 76 does not require these terms of reference to meet the essential EA requirements of the current Environmental Assessment Act, subsection 5(3), particularly the consideration of alternatives and alternative methods. Therefore, Bill 76 permits the watering down of the environmental assessment process during the critical early stages of decision-making on projects that are reviewed under the Environmental Assessment Act. As a result, the provisions for terms of reference effectively dismantle critical aspects of the environmental assessment process in Ontario.

When we turn specifically to the record and agenda of this government, we would not advocate giving any government the power to remove those critical aspects of the EA process. This government in particular, however, has demonstrated since its election that it cannot be trusted with such powers. Since being elected in June 1995, consider the following highlights of environmental deregulation undertaken by this government.

Firstly, the termination of three advisory watchdog committees: the Advisory Committee on Environmental Standards, the Environmental Assessment Advisory Committee and the Municipal-Industrial Strategy for

Abatement Advisory Committee. After dissolution of the MISA Advisory Committee, changes to MISA standards were brought in which increased the annual quantity of toxic substances that can legally be discharged into Ontario waters.

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Secondly, changes to the Land Use Planning and Protection Act, Bill 163, brought in by the previous government as a result of the work of the Sewell commission, which weakened the environmental protection and public participation aspects of that act.

Thirdly, the exemption of the Ministry of Finance from the provisions of the Environmental Bill of Rights.

Fourthly, the cancellation of intervenor and participant funding, reducing public access to environmental decision-making.

Fifthly, massive budget cuts to the ministries of Environment and Energy and Natural Resources, which would inevitably reduce their ability to protect the environment and conserve natural resources.

Sixthly, release of this consultation document Responsive Environmental Protection, which advocates a variety of deregulatory actions such as removing the requirement that pulp and paper plants achieve the goal of zero AOX emissions.

This government quite clearly is intent on weakening environmental protection. We are convinced that any terms of reference for an environmental assessment in the future approved by this government would not require full consideration of alternative methods and need for undertakings.

As it has evolved, the Ontario environmental assessment process is a planning tool primarily applied to solid and hazardous waste disposal facilities. The best alternative, in our submission, to the disposing of such waste is not generating it in the first place. For that reason, solid waste is only partially a waste and pollution issue. Far more importantly, it is also a resource conservation and land use planning issue.

Until now, proponents, in order to receive environmental assessment approval, have been required to develop plans to maximize waste reduction, reuse and recycling efforts. It is now proposed under Bill 76 to give the minister power to abandon any such requirements, at the same time that the ministry is considering, as set out in the Responsive Environmental Protection document, revoking both the waste and packaging audit and work plan regulations and the refillable soft drink regulation. This government is thereby abandoning the policy of waste reduction which has been consistently produced by successive governments since former Conservative Environment Minister Keith Norton introduced the Blueprint for Waste Management in Ontario in 1983.

The government's response is that it has brought in new landfill standards, but such standards are of value only for the pollution aspects of the issue. They ignore and cannot address the resource conservation or land use aspects of the issue. That can only be done by keeping mandatory requirement for consideration of both alternatives to undertakings and alternative methods of carrying out undertakings.

With respect to harmonization, Bill 76, section 3.1, provides for harmonization of the Environmental Assessment Act with the requirements of other jurisdictions "if the minister considers the requirements...to be equivalent" to those imposed under the Environmental Assessment Act. It further grants wide-sweeping powers to the minister to alter the Environmental Assessment Act or do away with the environmental assessment process entirely. It does not provide, however, meaningful criteria for determining whether the requirements of another jurisdiction are equivalent to those of the provincial EA act, or for determining how the minister may exercise her discretionary powers to alter the requirements of the act or set them aside entirely.

As a result of the loose and general wording used in section 3.1, Bill 76 opens a door for environmental protection at the level of the lowest common denominator in Canada: harmonizing at the level of the weakest rather than the strongest standard. This will reduce government capacity to protect the environment and therefore constitutes environmental deregulation.

In conclusion of our formal submission, we would stress that the people of Ontario and Canada strongly oppose environmental deregulation. We have given examples of ways in which Bill 76 constitutes environmental deregulation, such as the provisions under section 6 regarding the terms of reference, the provisions under section 3.1 regarding harmonization, and various sections under Bill 76 which do not require public notice and comment on key EA act processes and therefore undermine public consultation and participation.

SEDIC considers Bill 76 to be another in a series of efforts by the current provincial government to dismantle an environmental protection regime which has developed over the past quarter century by successive Conservative, Liberal and New Democratic governments working in consultation with both industry and environmental groups together who have devoted countless hours and millions of dollars to a cooperative process of putting in place good regulation and environmental protection.

In conclusion, we have two recommendations. Firstly, we urge the standing committee to recommend that Bill 76 be withdrawn, and secondly we urge the standing committee to recommend that the Ontario government desist from the practice of environmental deregulation. That concludes our formal submission and in the time left we are willing to entertain questions and discussion from members of the committee.

Mr McGuinty: Thank you very much for your presentation. Your group is to be commended for taking it upon yourselves to pull together and to respond to government policy which you feel is ultimately going to be harmful to the people of the province, let alone the country.

I want to thank you for reminding us that it's good politics to look after the environment. Sometimes we lose sight of that fact. While it may not be a top-of-mind issue today when you knock on a door in Ontario, you scratch the surface a little bit and people will tell you they place a continuing obligation on the part of their government to protect the environment. At a minimum, maintain existing standards; better still, continue the slow but inexorable

movement we've had towards a better regulatory safety net.

I'm not sure I have a question for you. I'm just —

Ms Churley: End of the day.

Mr McGuinty: Yes. I'm very impressed with the —

Mr Macdonald: We would certainly agree with your comment, Mr McGuinty. This is one of the points we want to make, that successive politicians from all three parties — somebody like Andy Brandt got the message that it made good political sense to bring in environmental protection. We are convinced that this government too will come to see that and will, before the end of its term of office, reverse direction.

Mr McGuinty: Thank you.

Ms Churley: I'm not so fully convinced that this government is going to reverse its direction, but perhaps will come to some real common sense down the road and certainly understand that there's a cumulative effect. I believe that's partly what you're saying when you outlined some of the other areas of deregulation to date. I must tell you, you only scratched the surface. Those were some of the major components, but there are pages and pages of areas where this government has cut and deregulated, so when you take the cumulative effect it's going to have a very serious impact on the environment in the long run.

Just in the minute I wanted to come to the question I ask other people, and it has been raised by members sitting around this table and that is, let's take it for granted that the government is not going to withdraw the bill. Having said that, I'm not going to ask you, because there's no time now, what kind of recommendations you would make, but what would you say to people from all sides who have said there have been problems with the EA — and I think I've heard everybody from all sides say that to some extent and that changes need to be made. Supposing the bill isn't withdrawn, can you answer in a minute or so what the problem is and how you would go about — given that I said earlier that the government review period seems to be where the problem is in time frames?

Mr Macdonald: I'd be happy to provide a very quick response to that. Yes, of course, we agree that there have been problems which come from things like uncertainty, lack of predictability and length of time devoted to hearings.

We would point out, however, that in part this is simply the price we pay for environmental protection, that time and cost of hearings is time and money well spent. We have murder trials which do not have — it was suggested that limits should be put on or, as is suggested in this bill, that government should be able to reach into a board hearing and manipulate that hearing. We don't apply that to the judiciary. We think those things are important enough that we should pay that price in terms of time and cost.

Our major recommendations would be, in terms of environmental assessment that, first of all, intervenor funding should be brought back, which was taken away by this government and that, secondly, we should start to work to bring in the certainty and predictability, which the minister says she wants but has not provided, in order

that we can then extend the Environmental Assessment Act to the private sector as was originally promised by the Bill Davis government.

Mr Galt: Thank you for your presentation, most interesting, pointing out the extreme concern about environment. Our two opposition parties have expressed their concern. I can extend to you and assure you that the Conservatives in Ontario are also very concerned about the environment, concerned about the clarity and certainty of getting on with making things happen. Maybe we're going about things in a slightly different style than what you would recommend or that you would support, but certainly number one is the environment and we recognize the public's concern about the environment, and that's certainly the direction we're going.

I'm intrigued with your new organization, and I congratulate you on this organization being developed and rolling. I'm curious how old it would be or when you might have had an inaugural meeting.

Ms Mozer: We've been around since about January of this year; the initiative started last fall. I'd like to point out though, we'd like to not exist and we'd like to be working on developing environmental policy, not trying to stick a finger in the dike to prevent all this deregulation from spilling over.

Mr Galt: What involvement have you people had with environmental assessment activity in the past?

Mr Macdonald: We represent, as I said, students who are from a number of universities studying environmental studies and, of course, part of that is dealing with environmental assessment. I personally have undertaken an environmental assessment, the assessment of the Storrington township landfill extension, which takes waste from Kingston and Kingston township, which went through a hearing a couple of years ago. I at that time was acting on behalf of another actor which has appeared before your committee, Laidlaw Inc.

Mr Galt: You represent various centres of learning. I think in your case, Mr Macdonald, the University of Toronto, you're on faculty there.

Mr Macdonald: The University of Toronto.

Mr Galt: Do the comments made here today represent those respective schools of learning?

Mr Macdonald: Oh, I don't think we could speak for — I might ask my colleagues, but I would feel

nervous saying that we in any way represent any university. We represent a group of people, and we have brought along — I forgot to mention — copies of our brochure, and we spent considerable dollars on the printing job for this, as you can see —

Mr Chrom: It's on recycled paper too.

Mr Macdonald: — and we can provide copies. This lists the names, at time of printing, of the people. We're a group of people who came together because we're concerned about what's happening. We printed up this brochure, we're sending letters, and we held a press conference and we're appearing here before you. The three of us can speak on behalf of the organization, Stop Environmental Deregulation in Canada. We can't speak on behalf of anybody else.

I'll leave these brochures with you, Mr Chairman, if anybody's interested in having a copy.

The Chair: Thank you very much for appearing before us and taking the time to share your views.

Mr Macdonald: We would like to thank you for giving us the opportunity.

The Chair: Is there any other business?

Ms Churley: One question. In terms of amendments, is there a deadline for getting them in to the legislative committee? Because I've got some in, but over time there'll be more, I'm sure.

The Chair: Did you not receive a copy of the subcommittee report?

Ms Churley: Oh. Okay, I'll read it.

The Chair: Yes, it's in that.

Ms Churley: Thank you. That was you who told him to say that, wasn't it, Madam Clerk?

Mr Galt: There were two questions asked yesterday, one by Mr McGuinty and one by Ms Churley. We have the answers here. We'll pass them out and if there's any further clarification required, please let us know and we'd be pleased to do a follow-up for you.

The Chair: Very good. Thank you very much for that, Mr Galt.

Ladies and gentlemen, we'll reconvene tomorrow morning at 10:30 in Kingston, Ontario. We hope to see you all make it safely. We will adjourn the meeting for this afternoon.

The committee adjourned at 1605.

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**In attendance / présents*

Substitutions present / Membres remplaçants présents:

Mrs Barbara Fisher (Bruce PC) for Mrs Ecker
 Mr Mike Colle (Oakwood L) for Mr Gravelle
 Mr Doug Galt (Northumberland PC) for Mrs Johns
 Mr Ted Arnott (Wellington PC) for Mr Jordan (*morning*)
 Mr Jim Brown (Scarborough West / -Ouest) for Mr Jordan (*afternoon*)
 Mr Dalton McGuinty (Ottawa South / -Sud L) for Mr Kennedy
 Mr R. Gary Stewart (Peterborough PC) for Mr Newman
 Mrs Lillian Ross (Hamilton West / -Ouest PC) for Mr Preston
 Mr Ed Doyle (Wentworth East / -Est) for Mr Smith
 Ms Marilyn Churley (Riverdale ND) for Mr Wildman

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Journal des débats (Hansard)

Jeudi 8 août 1996



Standing committee on social development

Comité permanent des affaires sociales

Environmental Assessment
and Consultation
Improvement Act, 1996

Loi de 1996 améliorant le processus
d'évaluation environnementale
et de consultation publique

Chair: Richard Patten
Clerk: Lynn Mellor

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LEGISLATIVE ASSEMBLY OF ONTARIO
**STANDING COMMITTEE ON
 SOCIAL DEVELOPMENT**

Thursday 8 August 1996

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO
**COMITÉ PERMANENT DES
 AFFAIRES SOCIALES**

Jeudi 8 août 1996

The committee met at 1034 in the Holiday Inn Kingston Waterfront, Kingston.

**ENVIRONMENTAL ASSESSMENT
 AND CONSULTATION
 IMPROVEMENT ACT, 1996**

**LOI DE 1996 AMÉLIORANT LE PROCESSUS
 D'ÉVALUATION ENVIRONNEMENTALE
 ET DE CONSULTATION PUBLIQUE**

Bill 76, An Act to improve environmental protection, increase accountability and enshrine public consultation in the Environmental Assessment Act / Projet de loi 76, Loi visant à améliorer la protection de l'environnement, à accroître l'obligation de rendre des comptes et à intégrer la consultation publique à la Loi sur les évaluations environnementales.

SENES CONSULTANTS LTD

The Chair (Mr Richard Patten): Good morning to all the committee members, and new members Doug and Leo. This is the third day of hearings. It's good to be in Kingston, and strange to see so many sailboats still docked at the harbour.

We'll proceed this morning with our first witness, from Senes Consultants, Mr Victor Morris. Our procedure is that one half-hour is your allotted time, and any time remaining following your presentation is divided equally between the three parties. This morning we begin with the NDP after your presentation, and I'll let the parties know how much time they have. Welcome, and thank you for taking the time to present to us.

Mr Victor Morris: I appreciate this opportunity to submit to the committee my thoughts with respect to what I consider this very important legislation. I've been involved with the EA act since its inception and in proceedings leading to its creation. I'm supportive of the intent of the act and the stated intent of Bill 76 for the need to "improve environmental protection, increase accountability and enshrine public consultation."

Taking landfill as an example, I know what an old dump was like versus what a properly designed landfill site should be like. If you'd bear with me, I'll briefly review why I'm saying what I'm going to say.

My experience includes working for local municipalities in siting and designing landfills. The first one was the city of London, the selection-approval for the W-12A landfill site in the township of Westminster, so it was outside the city. This required separate EA and OMB hearings, with extensive duplication of evidence. This was corrected by the consolidation of hearings, and I believe that other improvements that started then were

better public consultation and consideration of compensation for adjacent property owners.

For the town of Paris, an EA for a landfill approved without a hearing, in 1994-95; there was good direct involvement of the public and local support for the process.

Then we're doing four landfill searches in northern Ontario and they're conducted under the sectoral EA proposal for waste management planning which was developed by the ministry. I think that was a good first step in developing a streamlined process. It seems to be working very well up there. It addresses local conditions and you get the public involved early, and it seems to be working well.

For a citizens' group, I worked at Meaford-St Vincent, where they were opposing an application for a landfill site. That application had taken several years to develop, nine or 10 years, and then it was rejected on the basis of process. I believe this emphasizes the need for the suggested terms of reference at the beginning.

I was involved in environmental assessment for an energy-from-waste facility in Victoria Hospital, London. I was impressed there by the consolidated boards approach, where they dealt with critical issues in, I consider, a very efficient manner.

I've been involved in larger-scale projects with the region of Peel, development of a master plan and landfill search. Here, one of the major lessons was that there was a council decision which, as their consultants, we advised them might lead to problems with the EA process later, but we couldn't get a decision to that effect and they proceeded and spent millions of dollars before the thing finally came up when the EA was submitted. I believe the process should be able to deal with these earlier on.

The Solid Waste Interim Steering Committee was formed to develop a comprehensive waste management system for the greater Toronto area, and the municipalities were directly involved. I felt there was good cooperation there and they were working together as a team, but that was stopped with a change in provincial government.

Then we had the Interim Waste Authority work, a landfill search in Peel region. They prepared a draft approach for public review at the beginning, but there's a traditional problem in getting the public involved early in the process, and I think that was one of the problems.

Then we've been working on the Metropolitan Toronto Adams mine site, which Metro has, for economic reasons, decided not to pursue, but which will be continuing as a private sector involvement. It gives some experience in dealing with the private sector development and the case for looking at specific proposals rather than looking at every alternative.

Basically, I believe that despite recent efforts by the board to improve the process, the EA process has lost its original objectives of protecting the environment while allowing necessary public service works to proceed in a reasonably predictive and cost-effective manner. In the Canadian Environmental Assessment Process Citizens' Guide, there's a statement that I think puts it in a nutshell: "The level of effort required to carry out an environmental assessment should match the scale of the likely adverse environmental effects of the project." In other words, every project doesn't have to go through every detail of a process, as long as you're addressing the ones that matter to the environment.

1040

This is emphasized in what we've done in Ontario with the class EA system. I think that's an excellent approach. It's been developed by all levels of participants and government in the province and defines what you need to do for pretty routine projects. You don't have to go through a full system. That's efficient, in my opinion, and it seems to be working well.

Based on this experience, I believe there are three major areas for improvement: We need more certainty in the process and that should associate efficiency and less protracted upsets. I believe it's tough on the public to drag these things out and have all sorts of upsets through 10 years of operation. For example, the Meaford board, when they rejected that application on the basis of process, stated that it would have been preferable to have had good guidelines at the beginning of the process so that everyone knew where they were going and what they had to do. I understand there was a problem there, that the process was still developing, but it could have been better defined at the beginning. It would have saved a lot of trouble and a lot of expense.

As I mentioned earlier, Peel didn't get the decisions on the process early enough from the ministry, despite requests for guidance at that point. I mentioned the IWA did prepare draft terms of reference, but had difficulty getting enough public attention. That's a traditional problem. When a municipality starts a landfill search, how do you get the people interested until they are faced with a site right next door? But I believe, in this province anyway, the people are far more sophisticated than they used to be. If proper notice is given and so on, people will get involved, especially if they know they can't wait till the end before they show some interest. That, in my mind, means getting the elected people very actively involved early in the process.

In summary, I believe initial firm terms of reference, taken seriously, are critical to improving the process.

Second, alternatives to be looked at must be clarified. To what degree do all possible alternatives have to be examined? There's a public benefit, certainly, in looking at reasonable alternatives. We should do that. But as part of an initial site selection, landfill sizing must look at waste quantities — which isn't always as easy as it seems — the 3Rs component and disposal options and what's required to meet the objectives of, for example, provincial 3Rs regulations.

Just using an example, energy from waste has been resurrected, and in some communities we can say right

off the bat that if they're going to confine it to a small, local area, there's no point in studying an expensive energy-from-waste alternative. There are — I'm thinking of mass burning here as the example — other energy-from-waste alternatives that are coming on the market that are more suitable to small communities, but it may be decided, just as these northern communities did, that that wasn't for them. They couldn't handle it, and nobody would argue with that. But it might be considered as an alternative in a larger municipality.

I know the board has stressed that you don't have to find the best landfill site, but in the course of legal debate and so on, that always seems to come up: "You've looked at this, but isn't there a better one up here somewhere?" As long as you're finding one that's environmentally acceptable and have had a reasonable review of the process — again, it's easy to quote the northern ones, but there you're faced with thousands of square miles of study area, and with the agreement of the public we're able to sit down and confine that to what I consider a logical approach: We take the main highways so that the trucks are using those and study areas first, say a kilometre on each side of these main highways, rather than looking at the whole area with all the associated costs. If you can't find a suitable site in that area, then you can expand it, but someone could say, "There's a better site 100 miles away."

I believe if you have a specific proposal to restore a pit, for example, that could be defined in the terms of reference and challenged. If it's agreeable that that is a viable alternative, then it should be allowed to go ahead without examining every other landfill option in the potential service area.

The types of issues to be considered by the board must be defined better. I believe strongly that we've got into public debate on technical issues which should be settled by regulatory authorities. In other words, the proponent has presumably hired a competent consultant who will give them advice on designs and so on for the technical aspects, and the regulatory authorities should have the capability to say whether that is technically feasible or not. We don't have to spend months debating that with lawyers and losing the technical issues, really, and all sorts of other things. The board can still examine, if necessary, social compensation and relocation factors and so on, things that are directly impacting the people and not subject to decision by regulatory authorities.

Specifically with respect to Bill 76, I've just noted here the items that I felt most strongly about.

The first one is harmonization, section 3.1. I believe this integration or harmonization is very critical, especially if you have the federal government involved as well as the provincial government. It has to mean a commitment by these people. In other words, we've run across areas where we've consulted with other levels of government and they've said, "We don't think we have a problem," and then later on they come up and decide they have a problem. With the guidelines and so on, they would have to be accountable. They're given the chance; they have to respond to what the project is or shut up. You can't keep coming back and forth on this thing.

That may require adequate resources and consistent policies by these groups. I know we're into budget-cutting and so on, and I don't think we have to expand our regulatory authorities tremendously. We've got a lot of good, competent people, and in certain specific areas they can hire the best in the world and get a decision on whether it's acceptable. It will be cheaper than going through what we've been going through in the way of the EA process — on technical matters.

The terms of reference, subsection 6(1): I believe this is a good idea for both proponents and interested parties, to address the basic issues up front, as I said. It should avoid delays, confusion and possible rejection of a nine- or 10-year process on the basis of some process item that really didn't have a big impact on the environment. They're essential to meeting the objectives of Bill 76. If we don't have these draft terms of reference, I don't believe the rest of the bill will result in any improvement.

However, I believe we need some elaboration, either through regulation or guidelines, on the requirements as may be prescribed. That's to assure both the proponents and the public to what they're getting into. I don't believe it is difficult, based on everyone's experience to date, to produce those. They can be produced by the Ministry of Environment or proponent groups for submission and approval by the minister. I was thinking particularly of the Northern Ontario Municipal Association where their approach to, say, a landfill site may be different, and rightfully different, from what you have to do in the southern Ontario, highly populated areas.

They should be applicable to both the public and private sectors. We have to address that there can be differences, but you can still match the two so that you're covering everything you want from an environmental point of view.

The level of detail required is mentioned, and that can be illustrated by these examples. I believe that would help to sell the bill if people really understood what caveats and provisions are in there before going ahead.

Deadlines: According to the guidelines that have been published, I believe they're quite tight, but they're reasonable as proposed if you get this harmonization and concerted effort. It should stress the importance of the process, in other words that it's not going to drag out, that you have certain deadlines to meet and we can all meet them if we put our minds to it.

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Obligation to consult: At least minimum procedures should be outlined for the EA and for the terms of reference. I believe that is important to assure people. Most responsible proponents have a good front-end system anyway because they know it's necessary, things like adequate notice in the service area so that everyone gets a chance to be aware of it and respond, get involved. As mentioned before, I believe the elected reps are key. They're elected to represent their people; they should be heavily involved in this front-end notice business. Then you could probably go as far as forming, in most cases, a liaison review committee of people who have been identified as interested and the local politicians.

Preparation of the EA itself: As for the terms of reference, I believe examples should be provided which cover both public and private sector proponents.

In the submission of the EA, again outline minimum procedures for notifications. I don't think that's a hard thing to do. These would be at least minimum and would give this assurance to people working in the business.

Remedying deficiencies, subsection 7(5): I was a bit unsure actually of this seven-day requirement. It could be that something is identified that requires a study that, despite the initial terms of reference, takes longer than seven days, hopefully in most cases not, but there should perhaps be a provision for extending that seven days if there's a good reason for it. But that should be the minister's decision.

Mediation: Again, that's a minor item really, but the proponent would have to pay for this. It may involve a full board hearing. Some assessment should be made of what it's going to cost proponents so they can be informed and make a decision whether they want to proceed or not.

The scope of the hearing is probably my most important concern and I think I've touched on it already. I worry about this clause which says that the board can still hear argument. I've talked to some lawyer friends and I get different opinions here: that the argument might only be an identification of an issue without presenting full evidence and so on; and others say, "Once you leave that open, we'll drive a truck through it and continue the past process."

In the bottom line I believe there is ample opportunity in the preceding steps, if the bill is implemented, to avoid the unexpected. People can't just say, "I'll wait until the hearing and then bring up all these things"; they have to bring them up at the front end. I believe they should be required to submit issues to the minister in writing early in the process steps, and it would be preferable to delete this provision that the board can then open the whole process up again. I must say I wrestled with that, but I do believe it's too open to misuse.

Decision of the board not invalid: I had a little difficulty with this one. Why is this clause necessary? In other words, if the board must make a decision on the evidence as presented, given that the terms of reference have been agreed on and which presumably cover issues that have already been decided, why do you need this provision?

Proposed change to an undertaking: This should be defined as a significant change. I know we need a definition of "significant," but if it's submitted to the minister and he considers it significant, then it would be appropriate. Just saying a change — it could be a fairly minor change and then we've lost all we've gained in terms of saving time and effort.

The grandfathering clause: I think municipalities or proponents should be allowed to decide if the project, although not actually submitted at the time of the passing of the bill, is far enough along that they want to continue under the old process. That's just a choice of the people.

Finally, the class EA: As I said before, I believe strongly in this for routine-type projects. This would legalize the process. I think again we've built up guidelines. The Municipal Engineers Association has prepared good guidelines that they're working with, and something like this should be used as a reference in addressing the

requirements of the class EA — that would be your terms of reference — and the whole class EA process can be broadened to include more standard, routine-type projects.

It's apparent, if the bill goes through, it places a great responsibility on the minister, and ministers change. I believe, so that we don't keep going through this every time there's a change of minister, that we have to build up through the ministry staff a sound basis on these factors, types of terms of reference and so on, so that there is a routine to follow, and it may be improved as we go along but it can't be radically changed.

As I mentioned before, I believe the responsibility of a regulatory approval staff for technical issues should be restored and they should be made accountable for technical matters. In the early days, in the 1950s and 1960s, we had the Ontario Water Resources Commission, and they cleaned up this province. I know it's not perfect, but compared to the dying Lake Erie we had and so on they did a tremendous job and were recognized throughout the world as a first-class regulatory authority. They did things and they got them done. I shudder to think, if we'd had the recent EA process, they'd still be having hearings and debating whether or not to build a sewage treatment plant here. In the meantime the damage to the environment would be terrible.

I stress that example at the end. We get before a board with hydro-geological issues and it seems to take months and millions of dollars of debate before three good people who have been appointed. I think we lose technical decisions in the skill of the lawyers and the lack of expertise of people hearing the case. So, technical issues: Hire the best in the world; it'll be a lot cheaper, and that can back up the regulatory authorities.

Ms Marilyn Churley (Riverdale): You raise a number of issues that I wish we had time to discuss more fully, but we don't. I want to ask you in particular a couple of questions, one around the terms of reference, which is a key element of this whole process. As you know, that's critical because it becomes the structure for the entire EA. There's no provision within this draft bill for the public or municipalities to be involved in those very important upfront negotiations. There is a provision, apparently, that it can be — it doesn't have to be under the law — posted on the registry for public comment for 30 days after the fact; no provision, though, that the public or a municipality be involved in that. In light of your comment about not wanting the minister to add on other issues later, would you say it is important for the public and interested persons, whoever that may be — that's a whole other question — to be involved on the front end of that?

Mr Morris: Definitely. I thought I had covered that, actually, because I believe it should be made clear to everyone what we're talking about with early public involvement. That includes the terms of reference because, as you say, that's fundamental to the whole thing.

As I said before, good proponents would do that anyway if they're smart, because it just removes a lot of problems. I've found that where we can sit down with the public early in the process it's far more meaningful. You won't get everyone to agree with you, but at least they'll learn to respect an opinion and you can respect their

opinion and try to respond to the concerns. So yes, and I think there should at least be some minimum guidelines, as I said, on full advertising and giving people a chance to step forward. I know it's not easy to get them at that stage but, as I said, I think they're far more sophisticated now and I think we will get better response.

Ms Churley: Okay. I wanted to ask you a quick question on class EA. Unfortunately there's nothing, say, defining the threshold of which groups of undertakings should come under a class EA, and as you know, it's not as rigorous a process, and because it's not defined, theoretically anything could come under class EA.

Mr Morris: That's why I referred to these guidelines that have been developed.

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Ms Churley: So you would suggest that the government define within the bill as clearly as possible the more minor kinds of undertakings which should come under EA so it can't be abused, which is quite possible the way it's written now.

Mr Morris: Sure. That's like the terms of reference. If they refer back to these guidelines that have been developed over several years, and in my opinion a lot of good effort has gone into it, you can say, "Here are examples of what's going to be under a class EA and here are the draft terms of reference."

Mr Trevor Pettit (Hamilton Mountain): Thank you, Mr Morris, for your presentation. You obviously have not only a vast knowledge of, but a lot of personal, hands-on experience with EAs.

Mr Morris: I should have said that I'm talking as a taxpayer here rather than a consultant.

Mr Pettit: I understand that, but you do have a lot of hands-on experience, and you mentioned earlier on in your presentation the lack of certainty to the process. My question to you would be, do you feel that with the new bill, with the introduction of the terms of reference and time lines, that will provide more certainty to the process?

Mr Morris: Yes, I do, provided you give people a little more understanding of what these terms of reference are going to be like. They shouldn't become a mini-EA, where you spend two years developing the terms of reference. I don't think that's necessary. I think it can be done efficiently and that's essential: Set it up front.

Mrs Julia Munro (Durham-York): I certainly appreciate the information that you provided us with this morning. At the top of page 3, where you're talking about the importance of public input in the terms of reference, you also mention of course that proponents would assume that responsibility. I believe you alluded to the notion of some kind of threshold of public involvement at that level. The issue I see there is the fact that a threshold becomes both the minimum and the maximum at the same time. Would you comment on that problem, and do you see that in outlining any kind of threshold there are times when a particular proponent might have a different set of public involvement, according to the project?

Mr Morris: Yes, that can happen. That's why at least a minimum; I think a minimum is pretty common, and it should be part of the terms of reference so that people

understand what's going to be in there. Then it may be expanded if there's good reason to expand it. But the minimums that I mentioned, I think we're used to doing that: proper notification within the study area, involving local people and trying to find the interested parties. Then at least everyone knows they're faced with that cost, that they're going to do at least that. Then they may suggest in their terms of reference, "I want to go a step beyond that," but at least they have to do the initial part.

Mr John Gerretsen (Kingston and The Islands): Thank you, Mr Morris. You've obviously had a lot of experience in working with municipalities and citizen groups and developers over the years. Do you have any comment as to whether or not you feel, from your experience, that the government shouldn't be more actively involved in not only setting the rules and regulations as to how sites are approved but in actually developing the sites themselves?

Mr Morris: I happen to believe that in many cases you could get a better solution from opening it up to the private sector if it comes over with something. That may mean encouraging several municipalities to get together. In other words, there's more trauma often in having small landfill sites in each municipality than in combining their efforts, and that may be suggested to them by a private sector. I'm not a great believer in over-regulation. I do believe in what's happening parallel to this process on the development of landfill guidelines. There's a lot of work to be done on that yet, but at least it gives the proponents an idea of what the regulatory authorities are going to require. In other words, "If you're going to build a landfill site under these circumstances, you'll need a liner, you'll need this." That can save a lot of debate and grief, but I wouldn't go to handing everything over to government to do and build.

Mr Gerretsen: I don't know how many studies are currently going on in the province of Ontario, but I know that at one time there were over 50 of them going on, and there may be more now. As you know, in the Kingston area here they've been working on a waste management study for well over 10 years now and I'm not sure whether they're any further ahead to coming up with a conclusion than when we started it in 1985.

Mr Morris: Well, I've got two things there. When we worked on the SWISC process, I was quite impressed that for the greater Toronto area we had the chairman of each of the regions sitting at our meetings, participating and cooperating, so that I had great dreams of this giving a solution for the greater Toronto area.

On the other hand, with the IWA, one of the problems I found, and I'd worked in the region of Peel before for the municipality, we were far better received and able to communicate with the people for some reason than when we were perceived to be imposed on them by the province. It was just tougher to do. So I think you need this grass-roots involvement, but it can mean a combination of effort with different municipalities.

The Chair: Mr Morris, time passes quickly in these hearings. I want to thank you on behalf of the committee for sharing your views and taking out the time to be with us.

LEEDS AND GRENVILLE WASTE MANAGEMENT MASTER PLAN STEERING COMMITTEE

The Chair: Next we have the Leeds-Grenville Waste Management Steering Committee. Mr Thake, welcome to the hearings and state your name for the purpose of Hansard and begin your presentation.

Mr Bill Thake: Welcome to eastern Ontario. My name is Bill Thake. I'm reeve of the village of Westport. I've held that position for the last 27 years; it's so long, I kind of forget. I'm also a member of the council — for eight years before that. I've been warden of the united counties twice, in 1974 and 1992, and I've chaired our Leeds and Grenville Waste Management Master Plan Steering Committee since 1993.

Just to fill in a bit where Leeds and Grenville are, for those who are not familiar with the southeastern part of Ontario — I know Mr Gerretsen and Mr Jordan quite well are — the united counties are located in southeastern Ontario. We border on the north shore of the St Lawrence River and we're bordered by Frontenac county to the west, the region of Ottawa-Carleton and Lanark county to the north, and Dundas county to the east. Our area is roughly 339,000 hectares. We have a population of 89,943. It might be 89,944 — we might have had a birth or two overnight. We consist of 25 municipalities, being one city, three towns, five villages and 16 townships. The city of Brockville, the towns of Gananoque and Prescott are separate from the united counties for municipal purposes.

The background of our Leeds and Grenville study: If you refer to the handout, there's "Ontario Finally Finds a Perfect Dump Site," the Toronto Star of January 14, 1995, and "Phantom Dump a Quiet Success" from the Ottawa Citizen's publication of December 30, 1994.

In the beginning, in 1989, the united counties decided to undertake the waste management study. The MOEE agreed to finance 50% of the study costs. The study was to define the most appropriate waste management system to meet the needs of the united counties and the separated towns and city for roughly a 20-year period. Late in 1989 a public liaison committee, or the PLC, was formed to facilitate public input into the preparation. M.M. Dillon Ltd was retained by the counties in February 1990 to assist in the preparation of the WMMP.

Currently, 24 of the 25 municipalities participate in this study. Originally, 23 were in it because the Grenville-Dundas study was under way and Edwardsburgh township on our east boundary was included in that study. But when it was realigned to county boundaries it resulted in Edwardsburgh coming back into ours in August 1991. As well, South Elmsley township, which borders on Lanark, was involved in that particular land waste management study, but they joined the united counties in December 1991. The town of Gananoque withdrew from our studies in April 1995.

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Conforming to the MOEE changes, the original terms of reference were developed by the MOEE. In 1991 the ministry changed their direction and our study had to be restructured. This resulted in additional time and consulting fees to prepare a waste management diversion system

plan that was required and a landfill site selection methodology report. It means we had to go back into the study and redo parts of it over again.

Submissions: In December 1994, the preferred land site which we identify as ED-19 was identified. In the summer of 1996 detailed investigations on the site were completed. At the end of August we hope that the draft EA and EPA documents will be ready for public and agency review, and I'm led to believe they will be. A six-month review period for the public and the government agencies has been planned. Submission of application for landfill site approval is anticipated in 1997. The costs of our study as of June 30, 1996: \$2.15 million. MOEE has contributed \$666,000. As you can see, we've been a victim of the cuts as well, the 50% costs. If you divide that by two, \$666,000 is a long way from 50% of \$2.15 million.

Just some comments on the EA process: The study is carried out to meet the requirements of the existing EA Act, and we fully support legislation intended to protect the environment and ensure public accessibility to the process. In our study so far we have found that the public accessibility to the process from day one is very formidable because, as you know, fear of the unknown is the worst fear there is and if you keep people in from day one and they know what's happening it certainly makes the process a lot easier. If you read the newspaper articles, you'll see the results.

We are confident that we have identified an appropriate site for landfilling, with extensive public consultation since the beginning of the study. As a result of that, the host municipalities and the residents living near the site are in general acceptance of the proposed site — very little problems. We are reasonably confident that no one will call for a hearing, but if a hearing is necessary we are concerned that the costs will be unmanageable for the ratepayers, with the cuts that are being passed down to municipalities.

The steering committee had undertaken the study anticipating financial support from the MOEE for the detailed investigations, a hearing if necessary, and construction of the new site. This funding program was cancelled. The steering committee has to decide whether or not to seek approval to operate the landfill site solely by county ratepayers. When I say "county," I take in the separated municipalities — very difficult to sell your colleagues on counties' council who currently have disposal capacities in their own landfill sites, to have to put the money into a hearing if one should develop. If they know that the hearing is imminent, it would be impossible I think to get the funding from the finance committee of the united counties to conduct that hearing.

Now a few comments on Bill 76. Our study committee generally supports the proposed amendments of the existing Environmental Assessment Act, based on our understanding that they will (1) add certainty to the process, (2) decrease costs, and (3) shorten the time required to complete a study. By the time you complete the study under the way it is now, in the case of certain municipalities, the capacity in their present landfill sites has been used up, they're on an emergency operation certificate and waiting for things to happen.

We support the intent of the proposed amendments to strengthen the environmental protection, retain the broad definition of the environment, focus on environmental impacts and not on the process, ensure that public accessibility is there, and end an era of costly and unmanageable EAs.

We support the idea of getting the minister's approval at an early stage for study terms of reference which would be binding on all parties. However, we are concerned that proposed subsection 9(6) does not go nearly far enough. It's not good enough that the board "shall consider" the approved terms of reference. The board's decision must be consistent with the terms of reference as approved by the minister. This would add certainty to the EA process.

We support mandatory review schedules. We hope they will remain as strict as currently proposed.

We support the idea of the minister issuing policy guidelines under the proposed section 27.1. Specifically, there is no point in reinventing the wheel for every municipal study. The minister should issue a policy that clearly states the ministry's expectations for the municipal waste management planning which focuses on the 3Rs. Diversion targets, availability of incineration as an option under the right circumstances and recognition of the need for landfill should be addressed in the minister's policy guidelines. Municipalities would then be able to quickly and efficiently create a system plan, as Leeds and Grenville have done, out of which a series of individual projects and initiatives could come forward for approval.

Our major concerns: Most municipalities are currently involved in waste management planning processes. Many, like ours, are nearing completion. The issue of a transition to the new rules has not been properly dealt with in proposed section 12.4. Additional guidance on how transitions will apply to projects under way is needed.

Conclusion: We would like to take advantage of new EA provisions; however, we should not have to nor can we afford to spend more money to loop back into the process. Our study is too far advanced for that. To ask my peers on council for their support would be senseless. To ask Leeds and Grenville ratepayers to accept additional costs would be unacceptable.

That, ladies and gentlemen, is my main submission. I went through the highlights of this because, as a politician myself, I hate to have a document placed before me and then have it read to me. So I certainly am open for questions and would do my best to try to answer.

The Chair: Thank you very much. I appreciated the description of your constituency and I'm glad to hear of the growth dynamic in your population. We begin with the government side this morning.

Mr Doug Galt (Northumberland): Thank you, Mr Thake, for a very interesting presentation and presenting your personal experiences as you worked your way through this. This is probably one of the easier, more simplified ones that you're describing that you've gone through and accomplished, although you may not necessarily feel that way; the people in the area are accepting it. But you've ended up with \$2.15 million, I think was the figure that you told us. I guess I sit here and wonder if that \$2.15 million could have been better spent in a

proper engineered landfill site, in other words, a protection of the environment, rather than going through an awful lot of this exercise. My real question coming to you relates to, with this new bill, do you have any feeling of what it might have cost with Bill 76 in place rather than the old procedure?

Mr Thake: The first part that I think you're referring to cost us roughly \$1 million, so I would say that the saving would be a large portion of that \$1 million.

Mr Galt: How about environmental protection, as you look at Bill 76 and going through that exercise versus the exercise you went through? Will the environment suffer at all or will it be improved, in your opinion?

Mr Thake: I think it'll be as good, if not improved, in my opinion, sir.

Mr Galt: Actually, I did come across a statement in here someplace where you thought probably it would be improved.

Mr Thake: That's correct.

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Mr Galt: Rather than any loss, it would actually be a gain there. Does anyone else on the government side have questions?

Mr Ed Doyle (Wentworth East): Yes, I have a question. Thank you, Mr Thake, for coming today. You mentioned the terms of reference. Would your project, do you feel, have been helped considerably if there had been more public involvement at the beginning, early on in the process?

Mr Thake: We had public involvement pretty well in it right from the beginning, sir. It's just that the terms of reference, if they're laid down and approved by the minister, give you a more concrete nucleus from which to work rather than to come up with a set and then see if they're approved or not. We had MOEE resource people with us from day one until the cuts happened, just a wee bit over a year ago, and then we lost those resource people who used to attend all of our meetings, both public and committee meetings.

Mr Doyle: So you had public involvement early on in the process.

Mr Thake: Right from the start, sir.

Mr W. Leo Jordan (Lanark-Renfrew): Thank you, Mr Thake, for coming in and taking time to make this presentation. As you know, it's very relevant to my riding, representing Lanark-Renfrew. My question to you is on the use of good agricultural land for a waste disposal site. What is the feeling of your people on that issue? We're running into some conflict in our riding as to whether good agricultural land should be used for that purpose, or should we be using abandoned pits and lining them properly, including standards, if they are made available.

Mr Thake: That was one of the disciplines that was applied to finding ED-19. One of the criteria was good agricultural land. The location of ED-19 in Edwardsburgh township down in the very southeast corner of the counties means that my own municipality would have to travel roughly almost 80 miles each way to take their garbage to that site. But it was certainly considered in the disciplines and it carried a very heavy weight in the different sites and that's why the site that we picked is a

site on the Edwardsburgh land bank, which has a very good clay bottom, roughly 18 feet to 30 feet of clay, which makes a natural liner.

But no, my own personal opinion is that good agricultural land should not be used for a landfill site. I think we have lots of marginal land in the province of Ontario, such as you have said, in abandoned pits etc. With the proper type of lining, with the technology we have today to ensure there's no environmental catastrophe from the leachate in the later years coming from that, I think that they could be used and perhaps after that filled and they would certainly look a lot better than the abandoned pits and quarries that we have in our landscape today.

The Chair: I now move to the Liberal Party.

Mr Gerretsen: Welcome, Reeve Thake. It's always nice to have a municipal leader before this committee, particularly somebody who has served as long as you have. I'm sure, given the fact that the parliamentary assistant and seven prominent members of the government party are here today, they will look after the half a million dollars that you were promised towards your study costs. I guess you're about a half a million short and I'm sure that they'll take it back to their caucus and see that the cheque is in the mail by the end of the month.

Mr E.J. Douglas Rollins (Quinte): You speak for yourself.

Ms Churley: Good luck.

Mr Gerretsen: I'm very interested in the notion as to where landfills ought to be located. It always seems to me that the best site for landfills is good agricultural land, with good clay soil and what have you, and those are also usually the areas where you've got a fair amount of the population living. It seems to me, why don't we turn it around? This is something I've been promoting and picking up on something that Dr Galt mentioned, and that is that we all suffer from the NIMBY syndrome. Nobody wants the landfill in their back yard.

What is wrong with going to a piece of marginal land, as you're saying, where almost nobody lives, and engineer a site? Because apparently, by doing it, you've been fairly successful in at least getting the neighbourhood on side. Do you have any comments on that? Do you think we're going about this totally the wrong way? By looking for the best type of land, we're probably also finding the greatest number of people who live in that area and, as a result, the NIMBY syndrome might set in?

Mr Thake: That could happen, sir. As I say, we were very lucky because we do not have that many residents in the area that has been chosen by incorporating all the disciplines that the consultant came up with. I think one of the main things is education on how a current landfill site works, how it's engineered, and more or less works the same as a large factory or industrial complex, as compared to the old type of landfill site with papers and seagulls and everything blowing and flying all over and dump trucks going in half-loaded and leaving garbage along the sides of the road.

I think the educational part to educate the people in the areas that should be picked is a very important aspect because most people, when you say landfill site, regardless of how we want to say it, refer to it as a dump, and

the old dump comes back to mind. I think we'd all have to agree that nobody wants the old dump in their backyard. But with the education and the enlightening of how a modern landfill site works with recycling and composting and what have you, really it's the same as an industrial complex. It really isn't like an old dump.

Mr Gerretsen: Do you have any opinion at all on whether or not the government ought to be more directly involved in the construction and management of landfill sites, or do you feel that's a county responsibility?

Mr Thake: To be perfectly honest and speaking frankly as myself and as a municipal politician, I feel the county could run it far better because, as you're aware, anything run by either the provincial or federal government ends up costing eight or 10 times more than what the local people can operate it for.

The Chair: I move to the NDP.

Ms Churley: Thank you for your presentation. I'm wondering, just on a different track for a moment, how are you doing in your county on waste diversion?

Mr Thake: Very well. We've met our target, which was 50%, and we're actually above that target now by using recycling and composting.

Ms Churley: This government is phasing out the funding for municipalities for the blue box program. Have you planned or do you know how you're going to deal with continuing with that successful diversion — congratulations, by the way — when that funding runs out? Have you made plans? Is it going to be a problem?

Mr Thake: There are really, personally again, two ways to look at that: one, the blue box incorporation and the purchase of the collection vehicles etc. Most of them have been obtained under funding from the government in the past so that the actual cost is just the extra charge of perhaps a recycling day when you pick it up and the handling of the recyclables. I think it's more or less an economic tradeoff as to what it's going to cost you to go through an EA for your landfill site once it's filled versus recycling and increasing the life and usefulness of the site after it's operational or one that is operational now. I think you have to weigh those two things one against the other.

Ms Churley: Wouldn't you say — and I ask those questions because we all know, and you certainly know from your position, how complex trying to site a landfill can be, and in many cases much more complex and difficult than yours — that protection of the environment and going through an EA process is more than just about the right lining for the right hole, that at the end of the day we're looking at yes, dealing with the waste, but also using up our valuable resources, and that it's far more complex than just trying to find the right lining, understanding that we want to cut as much red tape as possible and to do it as efficiently as possible, that the bottom line at the end of the day is finding the best solution for the environment and for the people who live around the site? Would you not say that all of those components are an important part of an EA?

Mr Thake: They certainly are, ma'am, but most of those are included in the disciplines that are incorporated in the EA up to presentation to the minister for the authorization to proceed and get your certificate of

approval. If you incorporate those disciplines such as transportation, changes in lifestyle, social impacts and all that, if you include them from the start and include them in the public process, I think you will find we have covered all those and I think it depends on the terms of reference you use as a nucleus for your consultant to work from.

Ms Churley: Exactly. I guess I asked that question in response to Dr Galt's question to you about process and wouldn't it be better to focus on just the right lining for the hole in the ground, that it's all-important.

My last question, then, would be in terms of the terms of reference, and I'm asking this to everybody because I think it's important. You seem to imply that the faster you have the public involved the better capable you are of having a speedy process. Would you recommend to the government that public participation, in terms of dealing with the terms of reference, be written into the act so that the public are definitely, under the law, included in the negotiations around the terms of reference, because right now they're not.

Mr Thake: There again I have to have more or less two answers. I certainly think the public should be involved to an extent, but not to the extent where they can change the rulings that are found by the consultants by employing the disciplines, by foolish argument — let's put it that way. If they have a good reason, then I think the committee should hear them and I think they should be in there, but if it's somebody who lives 45 miles away and feels that seagulls are going to fly over their property coming back from that, something trivial like that has to be taken very, very lightly. And these things happen.

Ms Churley: I think we would all agree that we should find a way to deal with frivolous demands, although I suppose the person living there does not feel it's frivolous. You would support, then, public involvement from the very beginning of the process, with the caveat that —

Mr Thake: As I said, I would to a certain extent, ma'am; yes, to a certain extent.

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Ms Churley: The other question I have, very quickly, is, given that the government review period is actually the place where most of the delays are, do you have concerns that the kinds of cuts that are happening — the 752 layoffs to date, \$200 million cut from the budget, with more to come we think — will have an impact? Are you worried about that, that it will have an impact on government review time? If they have to do it within a contained time period, then I guess if there aren't enough experts there to deal with it in that timely fashion the best decisions might not be made. What would you recommend to the government around staffing to make sure that it's done properly?

Mr Thake: I would certainly recommend that the staff that they are able to maintain be the top-quality staff, and I'm quite sure — with no detriment meant to any of the elected members, I have been in several offices of different departments in the Ontario government and I'm quite sure there were more people in those offices than were required. Perhaps instead of losing stuff going from

one desk to the other they'll be able to concentrate on it and we will really save the time that way.

Ms Churley: Get more efficient.

The Chair: Sorry, your time is up. Mr Thake, thank you kindly for joining us today. We appreciate your presentation.

STORRINGTON COMMITTEE AGAINST TRASH

The Chair: Our next presenters are the Storrington Committee Against Trash, Janet Fletcher and Douglas Fletcher. Welcome this morning to our hearings.

Mr Doug Fletcher: We appreciate the opportunity to present our concerns with respect to proposed changes to the Environmental Assessment Act. Although we have concerns about many of the changes being proposed, we wish to focus our submission on what we feel are three very important issues: (1) public participation and consultation, (2) intervenor and participant funding, and (3) powers of the minister.

The following is a summary of our group's experience in the environmental assessment process. To understand our experience you must put yourselves in our place as ordinary people, living ordinary lives, faced with a proposal that has the potential to adversely impact the environment and drinking water supplies as well as devalue our property. We believe that once you put yourself in our shoes, you will understand the need to include the public in a truly equal and meaningful way in the development of such proposals.

My wife and I spent three years searching for the perfect piece of property on which to build our dream home. In 1984, we found it in Storrington township on the beautiful Rideau Canal. Before we purchased the property, we were warned by other residents that there was a dump within a kilometre of the property and it was leaking contaminants into the environment. Since we had no knowledge about dumps or their associated problems, we did what most ordinary people would do. We checked with the authorities whose mandate was to protect our environment: the local Ontario Ministry of Environment office. We were told that there were no problems at this dump and that in fact the dump was nearly full and would close within a year.

Putting our faith in the words of a government official, something we have since discovered is at best naïve, we purchased the property believing we were protected from any impacts that might occur. Two other neighbours who subsequently moved into the area followed the same process and received the same answers. Unknown to all of us but not unknown to the ministry was the fact that the dump did have problems and that Tricil Ltd, the original owners of the dump, were planning to expand the site. We felt we were misled.

Public participation in the process was short-circuited by the fact that the original application was filed under the Environmental Protection Act and thus no public consultation or consideration of social impacts were required. The application was subsequently redesignated under the Environmental Assessment Act by the Minister of the Environment and the proponent was then required to involve the neighbourhood and the neighbouring

residents to consider the social impacts. We had no input on the criteria designed for the assessment because the minister did not require Tricil to restart the process. We were not going to be afforded a full environmental assessment process.

Pollution in a landfill site begins with the first bag of garbage. It's essential that the best possible site be selected for this enterprise in order to reduce or eliminate impacts. Without the public's involvement, all impacts of the proposal cannot be adequately addressed.

In 1988, we received a postcard from Tricil inviting us to attend a public workshop to review the proposal for the dump expansion. The proponent complained that involvement of the public would create unnecessary delays and that due to an emergency situation — which they and the municipalities using the site had created — this proposal must be pushed through with all possible haste. Until this time, the proponent had no intention of informing the neighbourhood residents of the planned expansion which would have doubled the size of the dump and would have compounded the existing impacts on the surrounding community and the environment. The proponent was not interested in public consultation.

The Storrington dump is located in a sand and gravel pit within a few hundred metres of the Rideau Canal to the east and south of the site — the canal actually follows a curve, and this is built right into the curve of the canal — close to a class 1 and a class 2 wetland complex; this is very close to the dump. There are 12 families living within a one-kilometre distance of the site to the east and the west and several other families in the surrounding vicinity, all of whom were impacted by trucking, litter, odour, dust, seagulls, rats, noise, illegal dumping etc, not to mention the devastating effect on property values.

The dump had been having negative impacts on the surrounding community and the environment for most of its 20-year history. Complaints by the residents went unheeded by the owners of the site and the Ministry of the Environment. In fact, it was the general opinion of the neighbours that the ministry always supported the dump owners on all issues, to the detriment of the neighbours and the environment. Prior to 1991, the ministry did nothing to alter this opinion; problems were allowed to escalate.

As noted previously, when we entered into the process, there was no opportunity to participate in the decisions about the purpose, the rationale, alternative methods or alternatives to the proposal since these decisions had already been made by the proponent prior to the redesignation under the Environmental Assessment Act. We were not advised as to how the environmental assessment process was intended to be carried out and what, if any, rights we had as the most affected residents. I do recall they gave us a small book about the environmental assessment process which we could read by ourselves. We and our neighbours dutifully attended workshops in order to learn about the proponent's proposal and to assess how this proposal might affect our community and our environment. We had no inkling at the start that anything was amiss; we were not educated in these matters. However, we can read.

After researching the documents which the proponent was required to provide us and consulting with others who had more knowledge of the issues, we came to the shocking realization that this dump had developed a leachate plume in the groundwater aquifer beneath and around the site which was growing in strength and volume with each passing year and making its way to the Rideau Canal. We were astounded to learn that nothing was being done by anybody to control the spread of contamination or to clean up the site.

We discovered that under Ontario law polluters are not required to clean up contamination until it leaves their property boundaries. If they own 1,000 acres, they can pollute 1,000 acres without concern. If contamination nears their property limits, polluters simply buy up more of the adjacent land to avoid cleanup. It was clear to us, even with our limited knowledge, that based on Tricil's own monitoring results the leachate plume was much more widespread than they were prepared to admit. Ministry officials sat on their hands and did not require Tricil to install more monitoring wells in order to determine the true extent of contamination. When we raised our concern about this, the proponent was unwilling to admit there was a problem and refused to discuss cleanup or environmental protection measures. The Ministry of the Environment appeared to give its full support to Tricil's application. Our concerns were being disregarded. **1140**

After approximately five meetings, the proponent abruptly abandoned the public consultation process, declaring that nothing was being accomplished, too much time was being wasted and they were in a hurry to get their approval. This left the neighbourhood feeling powerless to have any impact on the proposal; it seemed to be a done deal.

This motivated us to pursue a course of discovery about the state of waste management in the province and the looming possibility of permanent environmental damage to the Rideau system and the local drinking water supplies. The combination of the proponent's unwillingness to discuss long-term plans for the site or seriously to discuss and address the concerns of the people most affected by their proposal, the obvious support provided to the proponent by the ministry officials and the fears of the neighbourhood regarding the safety of their drinking water and continued damage to the environment placed the parties on a collision course.

We spent five years of our lives building our case against the proposed expansion. The core members of the groups all had full-time jobs. The work necessary to research and prepare our case meant that we now had two full-time jobs each: one job for weekdays and the other job for weeknights and weekends. We had to put off taking vacations, give up quality time with our families because this time had to be used gathering information through freedom of information searches — and if you've ever done one, that's no mean task — raising public awareness of the problems at the site, attempting to focus the attention of the ministry on our concerns and consulting with experts and others. None of this precious time was paid for. We spent hundreds of dollars on the costs for our own research. Freedom of information does not

come cheaply. The lost quality time with family can never be made up.

In 1990, Laidlaw Waste Systems purchased Tricil Ltd and became the new owners of the dump. We were able to negotiate an agreement with Laidlaw which enabled us to take split samples of the water in a discharge spring on adjacent property Laidlaw owned to the south of the dump across a township road.

At this point in time, Laidlaw was denying our claim that the contamination from the dump had crossed the road, even though it was obvious from their own monitoring results that this was the case. Our samples, later confirmed by ministry testing, showed that contamination had indeed crossed the road and was heading south towards the Rideau Canal. In addition, we subsequently discovered that radioactive waste had been disposed of at this dump. We were unsuccessful in our attempts to gather information regarding the types of radioactive waste and the quantities and the strengths. The neighbourhood grew more fearful about the situation. The proponent continued to do nothing; ministry officials continued to sit on their hands. No attempt was made to try to define the precise location, size and the strength of the leachate plume.

In 1991, Laidlaw faced charges regarding a series of silt spills into the canal from the dump, an extensive littering event that resulted from their continuing to dump waste during a windstorm, and odour problems at the site which had been ongoing for well over a year. They were subsequently convicted of most charges and levied a fine of \$94,000. They were convicted a second time with respect to odour emissions in 1994.

Between 1988 and 1991, three emergency certificates of approval to continue operations at the dump were granted by the ministry. The owners of the dump had the support of the municipal users of the site, the local ministry office and even managed to garner support from the chief medical officer of health for Kingston, Frontenac, Lennox and Addington counties by convincing him of a ridiculous claim that a public health and safety risk would result if the dump were to close. In fact, there were several alternatives. We have since been able to demonstrate there was never any real emergency on which to base these approvals. Although the public is not permitted to participate in the process of emergency approvals, we nevertheless took time to make submissions with respect to these applications. In 1992, the site was finally closed pending the approval of the expansion application.

By this time, we had no faith in the process and we were convinced that the decision to approve had already been made behind closed doors. We felt our concerns were never going to be addressed. It seemed our only recourse was to request a hearing in the matter, but because of our experience in the process so far, we had no trust that we would even truly be heard. Our request for a hearing was granted and the hearing commenced June 1992.

During the course of the hearing, Laidlaw was required to install additional groundwater monitors on property they owned south of the dump. It was determined after sampling these wells that contamination was much more

widespread than the proponent's application had indicated; in fact, the plume had extended by several hundred metres to the south and today it is nearing the boundaries of the site on all sides. If we had not been granted the opportunity to have a hearing in this matter, the detection of the true spread of contaminations may never have come to light, or not for many years. It should be noted that to date, nothing has been done to contain the cleanup of this pollution.

The hearing lasted almost six months, ending in November 1992. We were vindicated when the board's decision was finally released in March 1993. The board, after reviewing all the evidence and testimony provided by all parties to the hearing, had determined the truth of the matter and was prepared to take responsibility to do something about it. In a landmark decision, they approved the expansion but attached serious conditions that addressed the unsuitability of the site for continued waste disposal, the existing and potential problems of contamination of the environment, the impacts on the surrounding community, the inadequacy of public consultation, and the deliberate attempt by Kingston and Kingston township to establish a long-term need for the Storrington dump, thereby avoiding the need to site their own facility. Our faith in the process took a giant leap.

Laidlaw has failed to take advantage of this approval, despite their claims of an emergency need for the site, declaring that the cost of cleanup of existing contamination and adherence to the board's conditions respecting environmental protection will reduce their profit margin.

For the proponent, Laidlaw Waste Systems, the result of refusing to consult honestly and directly with the most affected public, working to resolve issues and concerns, was a hearing that cost them over \$7 million. This could have been avoided if they had made a serious attempt to address the issues and make compromises on the proposal that would reassure residents that the environment was being protected.

Instead, they chose to deal with our municipal politicians, offering a lucrative host municipality agreement which would have put a minimum of \$10 million into a community of only 3,500 souls. This agreement, made in secret behind closed doors with our municipal politicians — whose campaign platform was that they would not support the expansion of this dump — and mediated by the director of our local Ministry of Environment office — and this is while the hearing was going on — drove a wedge between the community and its politicians that remains to this day. Laidlaw was eager to spend \$10 million to buy the support of our township; however, they were not quite so eager to spend an equal sum in environmental protection.

Our experience with public participation and consultation has shown us that it is not effective under current regulations, and is certainly not improved with the proposed changes to the Environmental Assessment Act. We have had the opportunity to observe other processes under this act and have realized that public participation and consultation in this province is meaningless; it is simply not taken seriously. In fact, concerned members of the public are even prohibited by proponents in certain waste management master plans from joining in at

discussions at the table to review proposals. It is difficult to imagine any sort of proper consultation with the public if they are not allowed to participate as equals. The attitude of most proponents, both private and public, is that it is a nuisance to have to deal with people whose lives are directly affected by their proposals. They are unwilling to compromise and address concerns. They spend their time deflecting the public and trying to label them all as NIMBYs.

In our opinion, the bottom line is that if you want to set up a business in a residential neighbourhood, part of doing good business is to ensure that your neighbours and the environment around you are not going to be adversely impacted. Proponents should realize that they create a hostile environment when they refuse to listen to the concerns of the public. The public, in turn, feels powerless to have any influence over a proposal which will negatively affect their lives.

The proposed changes to the Environmental Assessment Act do not require public consultation in development of the terms of reference. Why bother to include the public at all? By not including the public in the development of the terms of reference at the outset, the proponent is free to exclude issues of concern to the public. The public most affected must be treated as an equal partner in the process from day one. If the government is serious about including the public in this decision-making process, they should legislate this right, clearly defining the requirements for meaningful public consultation; requiring the proponent to deal directly with the most affected public; defining who the other "interested persons" are; providing for arbitration where needed; and ensuring that the concerns of the most affected public are adequately addressed. If the minister is unwilling to follow this course, hearings must be granted to ensure the rights of the public. Until public consultation is enshrined and taken seriously, the result will continue to be a hostile environment where nobody wins and the environment itself may be the biggest loser.

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Intervenor-participant funding: The details of proposals under the Environmental Assessment Act are very complex, and ordinary people do not have the skills of an engineer, lawyer or groundwater specialist. The public needs experts to assist them in understanding the proposals and all of the ramifications. If a proposal with such far-reaching impacts is expected to stand on its own merit, it should be able to withstand public scrutiny.

We were very fortunate to be granted intervenor funding to cover the costs of our lawyers and expert witnesses to put forward our case at the hearing. Our group has seven core members and we represent approximately 40 families in the immediate vicinity of the dump. This is a small, rural community; people live ordinary lives and have ordinary or less than ordinary levels of income. As part of the process to qualify for intervenor funding, we were required to raise funds to help cover the costs of our participation. We were able to raise \$1,200. The hearing costs for our own legal and expert assistance totalled approximately \$500,000. Even in our wildest dreams we could never have raised these funds on our own. How effective would our case have been without this assistance?

We were not funded for important expert testimony to counter evidence by the proponent regarding the issue of property devaluation. We were not funded for the time we had to take off work to attend the hearing, although everyone else who participated in the hearing was compensated for their time. We were not funded for any of our group's costs other than for the legal and expert assistance. We were required by the board's decision to pay 2% of our total costs for such assistance.

Without intervenor funding we could not have hoped to participate in the hearing. It does not seem fair that ordinary people have to decide between dropping out of a process or taking on a very substantial debt in order to protect themselves and their environment. We supposedly have a government department whose mandate it is to protect our environment. However, the reality is that we're on our own, and if we want to protect our environment and our quality of life, we are faced with a daunting task. Despite the board's landmark decision, we certainly would not recommend our environmental assessment experience to anyone.

Laidlaw appealed the board's decision and its appeal was denied. However, it does not end there. In fact, it never really ends. They get several kicks at the can. We have had to devote the past three years of our lives since the release of the board's decision to monitor the manipulations of Laidlaw in its continuing quest to get a variance of the board's decision, having to absorb all the continuing costs of legal and expert assistance. In our opinion, if proponents fail to take advantage of an approval, that approval should lapse after one year. Ordinary people should not have to go through what we are going through now. If conditions change and the application truly needs to be reassessed, a new application and process should be initiated with a reconvening of the board to hear new evidence.

Intervenor funding was initially established to level the playing field. A corporation like Laidlaw has corporate assets of over \$2 billion. It's a little difficult to move into a community, with most people making \$30,000, that can even afford to match them. Since the minister has not renewed the Intervenor Funding Project Act and has not yet proposed new legislation for funding provisions, how does the minister expect the public to meaningfully participate in the process?

To have any sort of impact on decision-making, you must have experts to assist you in understanding the proposal and all the ramifications and to put forward your case if a hearing ensues. Without intervenor funding or participant funding, the public is impotent. We simply are unable to have any impact on decisions that directly affect our lives and our environment because we are not financially capable of doing so.

If the government is truly serious about enhancing public participation and consultation in the environmental assessment process, funding must be provided by proponents to cover the costs of the public working with them to come up with a fair and equitable proposal, and if that process fails, to cover the costs of preparing and presenting their case at a hearing. Without funding, there is no possibility of meaningful public involvement.

We have great concern about the new powers given to the minister that make it possible to remove requirements

of the EA Act. This undermines the intent of the act. All proponents must meet the requirements of the act in conducting their environmental assessments to ensure that all impacts of proposals are assessed.

It seems inappropriate for the Minister of Environment and Energy to be in a position of power in respect to the granting or denying hearing requests. The Ministry of Environment is not really an impartial party in this process. One of their tasks in the process is to assist the proponent with their environmental assessment. However, they do not offer any such assistance to concerned members of the public who are directly affected by these proposals. They're on their own. There is also the risk of political influence in the decision-making process. In our opinion, decisions regarding hearing requests should be the responsibility of the Environmental Assessment Board.

Decisions of the Environmental Assessment Board must remain free of political interference. It appears that the Minister of Environment may be in a conflict of interest when amending or revoking any part of an Environmental Assessment Board decision. This could be compared with a party to a trial arbitrarily changing a decision arrived at by a provincial court judge. We believe that as a party to the process the ministry is not necessarily impartial. Therefore, the ministry should not have the right to tamper with the board's decision. No other party to such hearings has the power to change a board decision. Whether the ministry supports the proponent's position, supports the intervenor's position or remains neutral, having the power to change the board's decision is an unfair advantage over other parties to the hearing.

In addition, the Environmental Assessment Board has the opportunity of hearing all the testimony and viewing all the evidence provided by parties to a hearing. The Minister of Environment does not have this opportunity and is therefore not in a position to vary the board's decision.

In our opinion, requests for variances of Environmental Assessment Board decisions should be under the jurisdiction of the Environmental Appeal Board, and all parties, including the Environmental Assessment Board, should have equal rights and opportunities before the appeal board. At the very least, the minister should be required to consult with the Environmental Assessment Board with respect to any variance. The board should have the opportunity either to defend its decision or, following review, to agree to the variance, and all parties must have equal opportunities to make submissions.

As a footnote, the Environmental Assessment Board determined that Laidlaw's monitoring program for the closed site was inadequate and attached several conditions to its approval concerning improvement of this program. In a recently issued certificate of approval for the closed Storrington dump, the ministry refused to follow the board's directives. The ministry apparently does not agree with the board's decision in this regard. In our opinion, this amounts to a variance of the board's decision, and we believe the ministry has set a very dangerous precedent.

I'll try to make the recommendations quickly.

A clear definition of requirements for public consultation must be enshrined in the regulation. There must be a clear definition of who the interested people are and who they include. There must be a clear requirement for the proponent to deal directly with the most affected public and not the local host municipality. In our opinion, the Environmental Assessment Board should be appointed to arbitrate any dispute issues to avoid costly and stressful hearings. Proponents must be encouraged to deal with the issues and work to resolve them in a meaningful way. Hearings should only be avoided in cases where all issues have been satisfactorily resolved. The public must be assured that if the issues important to them are not resolved, a hearing must ensue.

Procedures must be put in place that ensure the public is clearly informed about the process and their role in the process before any consultation commences. This should be the responsibility of the Environmental Assessment Board.

Without funding for participation and hearing costs, meaningful public consultation cannot exist. The minister should reinstate the Intervenor Funding Project Act and legislate a requirement to provide participant funding at the commencement and throughout the consultation process. Such funding must provide the public with a level playing field. Disputes with respect to the amounts of such funding should be arbitrated by the Environmental Assessment Board. Since it is generally the affected public and the environment that are the potential victims in both cases, the requirement for the public to absorb the costs should be extremely limited.

Powers granted to the minister to arbitrarily decide that some requirements of the EA act do not need to be met must be removed. All environmental assessments must meet the full requirement of the act to ensure that all impacts are properly assessed.

The powers of the minister with respect to granting or denying hearing requests or variance of an Environmental Assessment Board decision must be removed. Hearing requests should be under the jurisdiction of the Environmental Assessment Board.

Requests to vary decisions of the board should be under the jurisdiction of the Environmental Appeal Board. At the very least, the minister must be required to consult with the Environmental Assessment Board regarding any variance of a decision and the board must be allowed to defend its decision or, following a review, agree to the changes. All parties must have equal opportunity to make submissions. Funding must be provided to the public to take part in the process.

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If a proponent fails to take advantage of approvals, such approvals should lapse one year from the date of the release of the decision to approve.

Sorry I've taken so long. Thank you.

The Chair: That's quite a journey you have been through. It seems to me all politicians in governments at all levels should take note very seriously. That's quite a case study.

We are out of time, but I'm going to allow each party to have one brief question out of respect for the journey you've been on.

Mr Gerretsen: I've got two comments. First of all, I agree that the review whereby the ministry in effect can change a decision made by a board is, in my opinion, totally inappropriate, because it gets away from the whole intent of sending it to an arbitrator in the first place.

The other question deals with intervenor funding, and I can certainly understand that in your particular case you never could have fought this thing on your own, obviously. Where do you feel there's a balance there? On the one hand, we're talking about \$500,000. Have you given any thought at all as to what kind of intervenor funding could be made available and yet also have the amount of money be accountable to the public as a whole?

Mrs Janet Fletcher: In our case the amount was so large because the proponent was so determined not to make any changes. It required us to counter all of their experts with our experts, and we weren't funded, as we said, for all of these people.

What we would really like to see is that proponents come to the realization that there are people whose lives are affected, and the first thing in their minds, other than making a dollar, should be trying to satisfy the concerns and the fears of the people who are going to be affected. If they did that, there probably wouldn't be a need for intervenor funding, because there wouldn't be a need for a hearing. There would only be a need for participant funding to take you through that process of ironing out the issues of concern.

I have no sympathy for Laidlaw obviously, because it brought this on itself, but back in the beginning of this process we were quite prepared to go along with whatever it had to say, as long as it addressed the questions we had. We weren't very educated. We didn't know anything about dumps. We didn't know there was a problem. They could have easily taken care of us at the start before we got into reading the documents and figured out what was going on. We had just enough time to figure it out, and the end result is what we've relayed to you here.

Ms Churley: Thank you for the opportunity. It is quite a journey you've been on, and I think it's important that the committee hear from community groups such as yours your experience, because we hear a lot from the likes of Laidlaw and waste management associations etc, which give their side, their frustrations, but to hear the public point of view is extremely important in terms of trying to balance this kind of complicated environmental assessment.

On the public participation side, the public are not included in the negotiations around the terms of reference, yet the government side — the ministry and the parliamentary assistant — has said repeatedly, "For the first time, public participation is enshrined in the legislation," which is great, but it's later on down the road. How important do you think that is? I agree with you the public — interested parties — needs to be defined, because we don't know what that means, but how important is it for someone in your situation to be very involved in defining the terms of reference?

Mrs Fletcher: It's really important to be in it right at the start, as the previous speaker also noted, mainly because of the issues that people are afraid of, things that

might happen to them and they're not sure what's going on. These things can be addressed immediately and not become contentious issues later after all the decisions have been made about the rationale, the alternatives and all the rest of it. It gives proponents who don't want to deal with public concerns the opportunity to exclude those issues, from what I've been looking at here. I don't think that's fair, I don't think that's equal and I don't see any purpose in including the public if you're not going to include them from the start. As I said, it just raises more problems along the line and you don't get a complete assessment; you don't see what's going on for the people who have to live with this thing day after day.

Mr Fletcher: I think there's also an education part to this whole process. We didn't come on the scene scampering at full speed; we were dragged into this kicking and shoving. It was a very difficult situation for us to get into. We had to be educated, and this takes time. We had five meetings with our friends from Laidlaw and that was it, "You're on your own." This takes time to get into it. They have experts. They know what their proposals are. They've got everything mapped out ahead of them. They're running this. They're full speed when they come in to meet us, the public, and we're kind of confused. It's a certain syndrome; it's almost like dying, I suppose. One has to go through different stages of coming to terms with it. The first reaction I think, I'm not ashamed to admit, immediately was NIMBY. "This thing was supposed to close; it's got to be got out of here; this is an affront to society etc." Later on you start to find out and discover what's really happening, and there needs to be time for this discovery to take place.

The public has to be educated. If you're going to live near a landfill site, it behooves you to know exactly what will be going on there and what's under the ground and how this may come around to affect you, and this takes time. I think the proponent, be it a city or a private proponent, should really be honest, straightforward and not try to mask the facts of what's going on. It has to educate, and that's why the EA is important.

Mr R. Gary Stewart (Peterborough): Thank you for your presentation. I think you and I have something in common, because I did the same thing. I bought property and live next door to a landfill, albeit one of the old ones, and it's the old ones that worry me. I can appreciate what you're doing, but that's not my question. My question is, under Bill 76, what we are trying to do with that bill, by looking at areas that don't have a major social impact, environmental impact, economic impact, and that will have an infrastructure under it, is that by looking at engineered sites, that will solve some of the problems you have had with the way landfill and dumps have been built in the past?

If you look well through Bill 76, and I know you have, do you agree with me that some concerns you people have had of the actual siting and building of dumps will be alleviated?

Mrs Fletcher: I don't see enough detail in the act to tell me that. I don't see clear requirements or clear guidelines for proponents on where to site a facility. I don't see a requirement for a diversion. That worries me. I think they need clear guidelines like, "You don't have

to put a landfill site on a river any more because you don't need to have that clay base; you can have these wonderful modern-day liners," which, believe me, don't work after 20 years. You've only delayed the pollution by 20 years with the liners.

Aside from that, I think proponents need clear direction of how to site a facility, what to look at in terms of 3Rs to make sure that the most waste possible is diverted from the site. I don't think 3Rs should be excluded. If there's any public nearby that's likely to be affected by issues like trucking or odour or seagulls, those issues need to be taken care of. You don't need to go to a hearing to solve these issues. These things can be solved in public consultation as long as it's dealt with from the start.

Mr Stewart: I appreciate that, and public consultation is needed; I have no problems with that at all. Of course we're looking at reasonable alternatives in where we're going to site it. I guess what worries me is that you're —

The Chair: One question, Mr Stewart. I'm sorry, we've gone over the time.

Mrs Fletcher: I'm sorry. We didn't realize we were going to be so long. It takes a while to tell the story.

The Chair: Out of respect for what you've gone through, believe me, there's a great deal of sympathy. Thank you very much for coming and sharing your experience with us. We appreciate it.

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SANDRA LAWN

The Chair: Our final witness for this morning will be Sandra Lawn. Welcome; you have 30 minutes. Whatever time remains from your presentation will be divided up for discussion among the three parties.

Ms Sandra Lawn: It's certainly a pleasure to be here today in this particular forum. I have a long-standing interest in environmental issues, having as a young mother and graduate in sciences from Queen's University been out cleaning up river banks and hauling garbage cans and old refrigerators out of the St Lawrence River. Having come this long route, I take a special interest in Bill 76.

Since the election of the government in June 1995, I've read and heard a great deal of speculation and naysaying about the fact that the new government does not have a commitment to the environment and that things are going to deteriorate very quickly. There's been a lot in the media, a lot of things said about this gloom-and-doom approach. It's my nature, having been brought up in northern Ontario and surrounded by nature and natural things all my growing-up years, to be more of a realist, I hope, than a pessimist. I do not share that pessimism but I have some thoughts on Bill 76 that have come in part from my experiences as a quasi-scientist, from my 19 years as a municipal politician where I was the chair of an economic development commission for over a decade, and also, I was the vice-chair of the Leeds-Grenville waste management committee until 1991.

I've also been a conservationist all my thinking life and recently was the empowerment director of a scientific research institute located on the shores of the St

Lawrence River, which is a very excellent example of a community taking its future into its own hands.

When we talk about environmental remediation and protection, I think one of the greatest things we have to overcome is public cynicism. Bill 76 is an instrument to help overcome that cynicism and involve the public in a meaningful way in the whole process. I feel there are some very important points made in Bill 76 that clearly define guidelines about timing, the introduction of mediation, which in many ways should facilitate some of the problems that are there now, and clear procedures for complaints and interventions are absolutely essential.

The provincial government obviously has a role to set the stage for environmental protection and enhancement, but it is my belief that this stage needs to be prepared at the place where the environmental protection and enhancement happen: at the community level, on the ground where the people are, both rural and urban. I believe also that those rural and urban people are the true experts in the protection of their own environment.

Local authorities have a crucial role to play. Many projects that will fall under this legislation are indeed prompted by the people of a community who come to their local authorities and initiate projects that they feel they must have; for example, proper waste management, good, clean water, the protection of a forest or the implementation of new biotechnologies in that community.

Clearly also, local authorities oversee the planning of such things as drinking water systems, roads, sewage treatment plants, solid waste treatment that we have heard a great deal about this morning, the planning of housing and industrial development; local authorities set local environmental policies and help to implement national and provincial environmental policies. As the level of government closest to the people, local authorities play a vital role in educating and mobilizing the public around sustainable development.

Knowing and perceiving that there are many intervenors in this whole process who are well-practised in the adversarial system, I'm going to confine my remarks to two areas: communications with public bodies and the public, and to put some added emphasis, I hope, on an ecosystem approach to environmental protection decisions.

In the first area, communication with public bodies and the public, true communication is two-way, and we've heard about that this morning. We've heard of some success in one instance and some drastic failure in another. If the public is to be truly consulted, it must have the opportunity to be involved before the matter becomes a crisis. It is human nature to react defensively to a crisis. The process of involving the public in environmental protection decisions must not only be early but effective. The public needs to be part of the early development of consensus. I use the example of the public coming to its local authorities and asking those local authorities to intervene or to begin the process of giving the public, giving the community proper landfill, giving the community good water supplies and so on.

Every community has responsible citizens who, for a variety of different reasons, are the true experts in their

own local environment. If they are consulted from the beginning, people will be saved a great deal of anguish and a time-consuming and extremely costly, as we've heard this morning, adversarial system.

Bill 76 instructs the public body to fulfil the legal requirement to consult. I suggest that we must add perhaps some words that would ensure that consultation be logical, accessible, in plain language, meaningful and early. My suggestions are therefore as follows, and I have a series of very small but specific suggestions that I think might improve the bill and eventually the regulations that follow from it.

The definition of "terms of reference": I think there is a series in part I where the definitions are all very well spelled out, but I would like to see the definition of "terms of reference" included because this can mean different things to different people and it is unclear precisely how this is to proceed. Municipalities are in many contexts accustomed to having the province prepare these terms of reference. Exactly what is the process going to be? I suggest that perhaps there is some ambiguity there.

In part II under subsection 6(1) and section 6.1, it would be important to add words to ensure that the public have really been informed and that it is not just people who "may be interested." I'm using the word "obfuscation"; I think that's a wonderful word because we have to be very careful, in the use of legalese and complicated language, that we don't in the end obfuscate what we have tried to make clear. It is important from the beginning to ensure that the public is perfectly clear about what is happening. An earlier witness or one of the committee, perhaps, mentioned that fear of the unknown is one of the greatest fears of all. I think we could do a great deal to mitigate that fear.

In subsection 6.2(2) of Bill 76, in the list of contents that would be included in the assessment, it would be very important to make note of the fact that people need to be involved in determining their own future. We have progressed from an agrarian society that has really done for themselves, then slowly but surely government began to take over many responsibilities of the community and then we began to introduce opportunities for the public to comment on government's actions. Now I believe Bill 76 is making an effort to involve people at an earlier time and in a more meaningful way, not just to get their reaction, and I think that's what is really important. The public should not be put in a position where they're having to react to something; rather, they should be part of the process right from the very beginning and they should be putting into action the remediation of their own specific environment.

In section 6.3 and in other places where it states we shall "notify the clerk of each municipality," I think it would be a good idea to consider the wording, "We should notify each municipality through notice to the clerk." I know of an instance with another ministry where policies on wetlands, for example, came down from the ministry in Toronto. They were circulated to the municipalities. The municipalities did not know of the implications of this until later on. The wording of these notices also is extremely important. I like the use of the word

"clear." I don't think it would hurt to add the word "clear" wherever possible to Bill 76.

In section 6.5, with respect to public inspection of the assessment, again we're setting ourselves up for an adversarial system where it becomes extremely costly. We heard of a tragic example of the very high cost of this adversarial approach. If we get to that stage and we insist that people have to put in writing their concerns about the assessment, I think a lot of anguish could be saved, and a lot of frustration and cynicism, if there was someone on hand to hear the verbal comments of people as well. The legalese and obfuscation and so on that often come through from the bureaucracy can create an unwillingness on the part of the general public to even want to participate in that.

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There are many examples of where it has really worked if the public are involved right from the beginning. We did hear one example of that this morning in the case of the Leeds-Grenville waste management committee. That was not a specific, definite requirement, but obviously wise people understanding the citizens of their region and making sure the public was involved.

I believe the provision of mediation is also a splendid idea and that those mediators, if they are there to work with the public and the proponent, should have access to all of the available scientific and health-related evidence that has been brought forward up to that point. This is just a small matter in the technicalities of things, but I believe it could be helpful.

Also, being sometimes not a picky person, but I like to pay attention to detail, and knowing from my own experience that technology can sometimes go astray, let's make very sure that the language we use in the bill — make sure that we are ready for sometimes that technical information getting lost on the lines.

Also, having been mayor of a separated town for 15 years, although I know that Ontario would probably dearly love to get rid of the separated towns, they do indeed still exist. So in order to be correct, the list of the municipalities should include separated towns.

The organization of the bill also: I feel that these bills are extremely important instruments of communication and of the will of the government, and therefore they need to be as clear as possible. I felt it would be a very good improvement to put the actual steps needed for the terms of reference and the assessment itself clearly at the beginning of the act so that people needing to know more could then go on into the act itself.

I believe environmental assessment decision-making, which is really what Bill 76 is all about, must integrate environmental, economic, social and governance policies in a sustainable manner.

The economic value of an ecosystem functioning in a sustainable manner is readily measured in tangible terms in eastern Ontario, and I think we in eastern Ontario perhaps have a special advantage in that our communities are relatively small and our environment is obviously extremely important for our economy in the areas of tourism, agriculture, rural development, urban living, manufacturing and just plain quality of life. They all depend, directly and indirectly, on a high quality of

water, and we are reminded constantly in our rural municipalities that groundwater is something that, if out of sight, should not be out of mind. It enters very strongly into this whole matter of environmental assessment; also soil, the air, forests and biodiversity. We are richly endowed in eastern Ontario and clearly we can see that everything is connected to everything.

Therefore, I would suggest that in subclause 10(1)(b)(iii) of Bill 76 we should not make the research, investigation, studies and monitoring programs related to an undertaking as something that comes later on. These are the kinds of things where the proponent should be informed very early on in the process, and the public along with the proponent, at the same time. Research of an appropriate form should not be optional, and research should also be multidisciplinary. I think that local authorities have been on the leading edge of the ecosystem approach. This is a new way of thinking about things. Rather than thinking of things in silos, we have got to think horizontally of the interconnectedness of all of these various things when it comes to our environment. I believe the province needs to encourage these innovations to the greatest degree possible.

One excellent example of this is the village of Westport, where they have innovated so greatly in the area of sewage treatment, for example, and the involvement of the environment with respect to their blossoming tourism industry, things of that nature. Also in the area of Cornwall we have seen the city of Cornwall and the united counties of Stormont, Dundas and Glengarry, the Mohawks at Akwesasne and the University of Ottawa coming together to look at their environmental problems in a multidisciplinary way, because that is the only way they believe they're going to be able to solve those problems.

Local authorities and the public must have a clear understanding of provincial policy principles right from the beginning. Therefore, I am suggesting that the Ministry of Environment and Energy should consider issuing policy principles in a very firm and definite way instead of "may issue policy guidelines." I think we need a much greater degree of comfort and knowing exactly what it is that the province is suggesting.

I would also recommend that MOEE sit down with the Ministry of Municipal Affairs and the Ministry of Natural Resources, the Ministry of Economic Development, Trade and Tourism and the Ministry of Health. I'd like to think this could happen very, very nicely at the community level or at the county or riding level to develop some of these principles that everyone would know applied to all ministries of Ontario.

There are many things in Bill 76 that I feel are valuable, and I do feel that in the hands of knowledgeable, caring people who know exactly what they're doing it could ensure indeed a more efficient and effective approach to environmental assessment and public empowerment. The only way we are going to make advances in our environment is through the empowerment of the people on the ground, at the community level, the local authorities that Agenda 21 talks about being the real place where the changes are going to take place.

I want to thank you for the privilege of presenting these thoughts on this very important matter.

The Chair: Thank you very much for your presentation. We'll begin with the NDP. We have two and a half minutes each.

Ms Churley: Thank you for your presentation. It's nice to hear from somebody who's not an expert and who took the time to read the bill and so carefully come up with some suggestions for changes.

I like your emphasis on community involvement, and I'm asking you the same question as I've asked others. There's no provision in the bill as it now stands for the public to be involved in negotiations around the terms of reference. There are some loose provisions, although it's not written into law, to post on the environmental registry, after the negotiations are complete, for public comment. I'm wondering if you would recommend to the government members that this be changed, that an amendment be made so the public would be involved from the very front end of the process.

Ms Lawn: I think it would be an easy matter to make that change, and I think the wisdom of the local authorities has proven to be correct in many examples where the public have been involved right in the beginning. Indeed, I think of my own community, where the whole issue of water quality was a very important issue. The public came to the community with concerns about the water quality, so the public actually initiated in an indirect way the whole process.

If we put people in an environment where they are face to face, talking about things that have to do with their community and the environment of that community, we would be very surprised, and I think pleasantly surprised, to find out that people who normally would end up being at each other's throats, when asked to share their vision for their community, would all have the same ultimate vision of what that community could be.

The Chair: We have two questioners: Mr Rollins and Mrs Ross.

Mr Rollins: Thanks, Sandra, for taking time to be part of that public. I think this process is part of being public, and it's nice to see that somebody has put in the time and energy and effort to come up with some good ideas. I think that most of them are very well thought out. People like yourself coming forward express exactly what we probably have to do in this government, which is to take a good look at letting the public be involved.

In our area where I come from, the Quinte area and Belleville, we have spent close to some \$2 million or more. We're not lucky like the people in — we had a gentleman speak from Westport, where they have found a dump site. We have come up with the idea; we haven't found one. So we've wasted that kind of money for a very simple reason: non-involvement. My thanks is just saying to you on behalf of a member of the government, thank you very much for taking part. We really appreciate it.

Mrs Lillian Ross (Hamilton West): Sandra, thank you very much. I enjoyed your presentation. I found it most constructive. You commented that you thought it was important that the public be involved all the way along the process and not just reacting to government actions, in fact being involved in the process. Do you not agree that in the new act there are more steps along the way to involve the public than there were previously?

Ms Lawn: Yes, and I'm really pleased to see that. I think that a wise proponent — in most cases we hope they don't need prompting, but it would be a wise thing to inspire that wisdom by ensuring they are reminded that the public need to be involved.

I use an example of a waterfront development in my own community, where the first thing that was done was that a public meeting was called about the waterfront: What are we going to do about the waterfront? The public came up with a lot of ideas, a lot of excellent suggestions. Then the process of changing the official plan and changing the zoning bylaw and so on followed that. The whole thing went, I know, so much more smoothly than it would have gone if the council had just come up with a plan and then said, "And now we want some public involvement." The public are very wise, and the public need to be consulted right from the very beginning.

I think this bill definitely makes that clear. I would like it just to make it a wee bit clearer by the use of some small changes in language on when the public is involved, and how they're involved as well. That could come out of the regulations. It could be, "We have a problem here, folks," and then you call the public together. The public will often share the same vision as the local authorities, or the provincial government or the federal government for that rate, but their opinion needs to be respected. I think you respect that opinion by listening to it and having a two-way communication.

The Mohawks say that you need to have respect, equity and empowerment. I think this is a process where we can see that demonstrated very nicely.

1230

Mr Gerretsen: I hope that what you're saying in your conclusion will actually happen. If we always had knowledgeable and caring people involved in these issues, I suppose we wouldn't need any laws at all because people would try to take care of the environment to the best of their ability and for the betterment of the environment as it is. I'm not sure whether that's always the case. Maybe I'm a little bit more pessimistic about it than you are.

I'm very intrigued with some of the amendments you've made. It's obvious that you've gone through this act in quite a bit of detail and you've put your MPA knowledge and bachelor of science knowledge from Queen's to good use. I always plug the institution and the various programs that —

Ms Lawn: That you've participated in.

Mr Gerretsen: Thank you very much. Is that on the record, by the way?

I'm concerned about time lines in all of these things. Do you have any general comments about the time lines that should be involved in the approval process? We heard the earlier presentation by Reeve Thake where basically they came up with their plan back in 1994, I believe he said, and they're still sort of waiting to get the final approvals once their plans have actually been forwarded to the government. Do you have any general observation as to how the time lines in this whole approval process can be improved upon?

Ms Lawn: I think Bill 76, in suggesting definite terms of reference at the beginning and then the steps being spelled out more clearly — if there wasn't the constant fear of the adversarial system and making some little slip in the process that is going to take you before the courts and going to give the lawyers an absolute field day — sorry — that in itself should make a big difference as far as the time lines are concerned, and some clarity on the principles that are to be applied.

I was involved with the Grenville-Dundas waste management study that eventually evolved into the Leeds-Grenville one, and there was always an unknown quality about it. We were in uncharted waters, it seemed. These things are not all that different across the province. It shouldn't be uncharted waters. By spelling all these things out more clearly in Bill 76 and the ensuing regulations, it's going to cut down on the time considerably.

The Chair: Ms Lawn, thank you kindly for appearing before us this morning and sharing your views. They were very thoughtful, and we appreciate it.

Mr Gerretsen: Before adjourning, it's my understanding that the city of Kingston wanted to make a presentation but for some reason — I think it's basically as a result of the city not knowing they had to apply to be on the agenda by a certain date. Could you just state for the record again and maybe for the other people who are here the fact that written submissions may be made to the committee, and what will happen to them?

The Chair: Yes, absolutely. People are free, from anywhere, at any time, to submit to the committee by way of the clerk's office. We can share an address with you if that's needed. That will be reviewed. Our research staff bring that together. We share all copies with all members. It's also considered as part of the report for the committee members for their consideration as well.

The basis on which people are selected is essentially a first-come, first-served basis.

Clerk of the Committee (Ms Lynn Mellor): No.

The Chair: I'm told it's not. What is it, then?

Clerk of the Committee: The responses to the advertisement that appeared in the paper were forwarded to each of the caucuses and the caucuses made selections from that list. Anyone who applied after, at that point the selections had already been made and anyone else has been encouraged to submit in writing.

The Chair: Thank you. We'll resume at 1:30 sharp. We have four witnesses this afternoon.

The committee recessed from 1238 to 1334.

KINGSTON ENVIRONMENTAL ACTION PROJECT

The Chair: Mr Walton, welcome and thank you very much for taking the time to be with us.

Mr Eric Walton: I'd like first to thank the standing committee members for this opportunity to speak on Bill 76. We're all volunteers at the Kingston Environmental Action Project, with busy schedules and limited legal and consultative resources. I've therefore asked a local Wolfe Island resident, whom you may know, Richard Lindgren, to assist me in technical and legal areas where I lack expertise.

I will be brief, since the Kingston Environmental Action Project's primary concern relates to clause 6(2)(c) and subsection 6.2(3) of the proposed bill. We interpret these sections as effectively granting the Minister of Environment and Energy special powers to bypass the requirements of a full environmental assessment and replace these requirements with his or her own terms of reference.

The planning value of a full EA is precisely in its ability to provide a standard and objective screen to a variety of different projects. Some projects will fail an EA; that is what one would expect from a well-functioning screen. Granting the minister special powers to redesign the EA process on a case-by-case basis seriously undermines the safeguarding function. In addition, it leaves the minister and other members of government vulnerable to intense lobbying and political pressure by proponents of these projects.

Improperly screened projects in the Third World — and I've lived for quite a period of time in the Third World, so I have personal experience of this — have often shown that it is only after a period of time that the full magnitude of the negative environmental, social and economic costs reveals itself. If Bill 76 is passed with these exceptional ministerial powers intact, it is likely just a question of time before we will start seeing similar outcomes in Ontario. I can foresee the day when forensic analysis of these white elephants traces their beginnings to this significant change in the EA process.

I would like to ask the committee to amend these sections of Bill 76 in order to protect the integrity of the full EA process. We have made slow but steady progress in Ontario towards sustainability. We still have a long way to go before we cease degrading our life support systems, but already the benefits of leading in this area can be seen in the proliferation of green businesses, deferred health costs and general quality of life. It is critically important that the government of Ontario distinguish between policy measures that reduce fiscal deficits and those that merely convert a fiscal problem into an environmental and social deficit. Failure to make this clear distinction between true reduction of debt policy measures and simple conversion will inevitably download economic costs into an environmentally and socially diminished future for all Ontarians.

We are confident that no member of this committee would desire that outcome. We would request that the special ministerial powers to bypass a full EA be removed from this bill. I focus primarily on this because I consider this by far the most serious implication of the bill.

Mr Galt: Thank you very much. It's kind of a treat to have a supershort presentation. It's to the point and zeroes right in on what you're concerned with. There certainly is no question it is the intent of the government to have full environmental hearings; there's just no question there. You're concerned about the fact that the act might allow something different in the terms of reference. Do you want to expand any more on how maybe the bill should be changed or what should be put in there to prevent the concern that you have from happening?

Mr Walton: In a way it protects the environment, but it also protects the political representatives by having an objective screen that can't be modified on a case-by-case basis. In a sense, I could see tremendous pressures in areas with maybe higher unemployment or where there are strategic reasons for bringing in a proposal. I could see intense pressure and political cost to not changing the terms of reference so that a proponent would eventually accomplish his project. In a way, I think the government ministers, members of Parliament, would protect themselves by having, in a sense, an objective body separate from the internal political party, having an objective screen. Because ultimately — we've seen it with Mirabel, we've seen it in the Third World with the Aswan dam, tremendous political pressures to push through projects which later turn out to be terrible mistakes and which cost tremendous amounts of money to society as well as the public purse.

There are reasons why certain projects don't pass an environmental assessment. We shouldn't see it as a failure in, say, progress, but we should see it as perhaps a project that should not have happened. The moneys would then go to other things. It's not like the moneys and the energy won't be diverted to other forms of progress, but they'll be diverted to projects with better long-term social, economic and environmental benefits.

1340

Mr Stewart: You had mentioned that you had spent a lot of time in Third World countries and the negative impact on the environment and so on that they have had because of lack of legislation and lack of direction and lack of a number of things. With this presentation, basically what you have zeroed in on is the one thing. Do you have any other comments on the bill as far as things that possibly should be strengthened are concerned? What we're trying to do with the bill is prevent the problems that have happened over the years in many other countries by getting some of the standards set and finding new and effective and efficient ways to handle our waste as well as protect the environment in all aspects. Do you have any comments on other things that you feel should be strengthened or indeed lessened?

Mr Walton: There is one thing, and that's the whole area of intervenor funding. I actually think there's a long-term preventive benefit to having very strong intervenor funding. Right now there is intervenor funding, but it's a real labour of love for the people who do it. If there's very strong intervenor funding, what actually happens is proponents probably do self-screening before they go into the whole process of environmental assessment, knowing that there will be a strong watchdog function provided by the public. In a sense, it will probably save everybody a lot of grief.

Right now, I suspect a lot of proponents recognize that most public groups do not have either the staying power or the funds to fully go through the full EA process and will wear them down, or they never appear. I think the Storrington group is more the exception to the rule. Perversely, increasing the amount of intervenor funding, creating a stronger public participation process, will actually result in fewer EAs, because everybody will understand that it makes no sense to go into the EA process when everybody is on a more equal playing field.

Mr Stewart: But do you not feel, though, that if the public is more involved — and certainly that's what we've been hearing over the last two or three days — the need for intervenor funding may be less because the public is involved on a relatively continuous basis and is part of it right from the start?

Mr Walton: We say "the public," but ultimately it comes down to a group of people and ultimately they're going to need money for legal and other expertise. It's not like the entire population of Ontario suddenly jumps into the waste management issue of Kingston and each chips in a dollar. It really comes down to a small group of people acting for the larger good.

Mr Stewart: But in some areas, with the way the process has gone on over the past number of years, where they come up with three, four or five site locations and you're giving intervenor funding to all of these groups and then they throw them out and we go to another one, clearly the process that we've been working on is wrong. What I'm saying is that if we can clarify and change some of this process, we may solve some of the problems that you're talking about and have more cooperation with people on a continuous basis.

Mr Walton: I'm afraid this is not an area that I'm really well versed in. Could you answer that, Richard?

Mr Richard Lindgren: I think the committee heard my answer to that question yesterday.

Ms Churley: Would you repeat that?

Mr Galt: Did you forget?

Mr Stewart: I was looking for a new perspective, sir.

Mr Walton: I agree. The process has to be clear, aboveboard; one needs to know who's involved and who's committed. If the funding is full so that, in a sense — I was reading the Storrington proposal; it was only partially funded. Really, a lot of their time is not funded. If we are going to have a consistent public intervenor, then let's give them their costs for their time as well, not just for the costs they incur in terms of hiring expert advice.

Mr Pettit: Mr Lindgren, I think it was you I asked this question to yesterday. I'd like to ask you this today, Mr Walton. Do you have any familiarity with the EA acts in other jurisdictions or provinces?

Mr Walton: No, I don't.

Mr Pettit: Okay, so we can't pursue that any further. Maybe you could tell us how you would like to see stakeholders involved at the beginning as far as the terms of reference go.

Mr Walton: I guess that's the key word, "in the beginning": right from the very start, before any terms of reference have been developed, involving the public who have a stake in that project, not later in the process but right from the start, and enshrining in the legislation those requirements. It seems to me fairly straightforward.

I think the key variable is enshrining who the stakeholders are in the legislation so that you have a fairly representative group, funding them fully so that you don't have a situation where groups with more resources can distort the process and ensuring that the process happens expeditiously. I think that's part of the problem. It just drags on for so many years that eventually those with fewer resources have to bail out.

The Chair: We must move on now. Welcome to the committee, Mr Cleary. It's your chance to ask the questions.

Mr John C. Cleary (Cornwall): Welcome to the committee. I just have a few questions here. I take it from your comments that you're not happy with the present legislation.

Mr Walton: Specifically this special ministerial power section.

Mr Cleary: The other thing that I guess you partially touched on is how you would like to see intervenor funding. Are there any other items you'd like to see changed?

Mr Walton: That's probably all I feel comfortable talking about, those two items.

Mr Cleary: Speaking for myself, I've been involved in these things for a long time. Do you not think that if the new legislation allows the public to be informed on day one that would solve some of the problems, that they would have their input into what's happening in their community and not finding out at second hand weeks or months or years later?

Mr Walton: That's one thing I wasn't certain of. I was under the impression that the EBR was going to provide that kind of immediate information on new projects, so perhaps the EBR process needs to be improved if that's not the function. But I was under the impression in terms of just straight information on new developments, the environment registry was going to provide the public. The problem is that it's not just who gets the information, it's what they do with it. There are a lot of people who I think read the paper but not a lot of people who necessarily will get active on an issue.

I think open and free information is essential and at the beginning of a process rather than later on, but I think there's much more to ensuring good public participation. Specifically, I think it's the resources available to certain individuals within that public group who have a strong enough interest in that area to get involved, because it is quite a change in lifestyle or a new expansion in your daily schedule to take on a cause that might take two or three years before it's resolved.

Mr Cleary: I would think that you would agree, and speaking for myself, having come from a municipal background for many years, the way things are right now municipalities cannot afford any longer the costs and everything, things dragging on for so long.

Mr Walton: I'm sorry, the costs of what?

Mr Cleary: The cost to the municipalities. Would you agree with that?

Mr Walton: That we're in a period of fiscal restraint?

Mr Cleary: They cannot afford the way it is at the present time.

Mr Walton: I agree. I'm all for fiscal prudence in government. The point I'm making is that it's very important that we reduce costs and reduce debt rather than converting those costs. We would all be millionaires tomorrow if we cut every tree in Canada, but then we'd have no forestry industry left. That's an example where you could reduce a fiscal deficit immediately but you would have no sustainability in terms of an ongoing income stream or resource stream.

It's very important that any measures that the government takes to reduce overspending be measures that are true debt reductions versus what I talk about, conversions either environmental or social, because the costs will come back to haunt a future government and future generations.

1350

Mr Cleary: If you had your wish today, what would your priorities be there?

Mr Walton: Essentially two things: that the special ministerial powers, this ability to create exceptional terms of reference be deleted from the act; secondly, in this area of intervenor funding, that people are paid for their time, not just for the legal expertise and other expert testimony, but that their time in intervening in these ventures be paid for.

Mr Cleary: Thank you. Those are all the questions I have today.

Ms Churley: Sorry I missed your presentation. However, I read it very quickly. It is to the point. I was surprised when I came in and found people actually asking questions on it. It's very rare that somebody gets so rapidly to the point in these committees.

I wanted to talk to you a bit about some of the issues you raised here. One is that you specifically refer to Third World countries and your experience there, but of course even in Ontario and in Canada — we don't have to go to the Third World to see some of the fallout from bad environmental planning here in Ontario. I think, as you rightly pointed out in your brief, that some of those white elephants from before led to the strong beginnings of the EA process we have. Some examples are groundwater contamination from leaking landfills, groundwater contamination of people's drinking water from leaking underground storage tanks that nobody thought at the time were eventually going to leak.

The committee was in Chatham yesterday and I was surprised to find out from a local member there that they can't grow beans there any more because of acid rain. We hardly ever hear about acid rain any more, but that is all global warming, the smog that we're experiencing right now, and I could go on and on.

Certainly we haven't solved our environmental problems here and there's a lot more to do in terms of finding better ways to protect the environment. I'm sure you're aware of that, but I just wanted to put on the record that we still have a long ways to go here in terms of the future problems.

Having said that, were you here this morning when the Storrington group —

Mr Walton: No, but I read it.

Ms Churley: Coming to intervenor funding, I think there's a very important lesson to be learned from that. When we hear about intervenor funding, immediately hackles are raised. It's taxpayers' money and it's going to those groups. Sometimes it's misused. I suppose in any system there can be abuses at times. But I think this is an example where at first you could think of this group as simply a NIMBY group, but of course in the process of doing their work and their studies they found out that there could have been environmental damage done to the whole Rideau system and the local drinking water supply.

So you could say that that was money, and in the long run a small amount of money, well spent in terms of the cleanup costs and the social costs that would have come further down the road.

I believe that's what you're trying to tell us today, that it's very important to look at the long term and not just see these groups who want to be involved because legitimately it's human nature to not want garbage in your backyard.

Mr Walton: That's a good example. Kingston is facing a bit of a landfill problem. A conversion of cost would be, say, reopening the Storrington site or opening a site that was inappropriately engineered and it would save money in the short term, quite a bit of money probably in the short term, but then 20 years from now the municipality would be faced with a horrendous cleanup or some other high health costs. That would be a downloading or conversion of cost example.

Ms Churley: That's what you're trying to get us to look at, the long term and the future deficits that can be caught.

Mr Walton: Sustainability I think is actually — I don't think this has been played up enough, but I think it's the most economically efficient way to operate because ultimately it's reflecting true costs. So one can make decisions that reflect true costs on a day-to-day basis and one doesn't have liability suddenly springing up on one down the road.

Ms Churley: Do you have any comments to make on the issue of — you may have mentioned this — citizens' participation throughout the process and in particular in relation to the terms of reference and the fact that that's not in the new bill and the fact that you're certainly concerned about the minister being able, in those negotiations, to negotiate off the table key components of the EA, in particular looking at alternatives, for instance. Is that the concern you have and why would that be so important to you?

Mr Walton: The EA has been developed over time and there are reasons for the screen that's there. I think removing some of those reasons may expedite an approval, but the long-term cost is that key variables will be ignored or sustainability will not be respected. We'll never be able to guess every possible impact of a development, but we can try our best. Ultimately, certainly the quality of our social and environmental life will be improved by that, but also I think economically we will be a better nation if we apply those kinds of criteria to projects because the best projects will then get the energy and capital and poor projects which have long-term liabilities will not get that energy and capital. So in a sense we're focusing on the strong projects, not the weak ones.

Ms Churley: Many of us are urging the government to come forward with a new intervenor funding project of some sort after the existing one was not renewed. Do you have any thoughts on how that might be done?

Mr Walton: I think the biggest point, and certainly that's been reaffirmed in reading the Storrington committee, is that there has to be funding for the time of some of the key players on the public side. It doesn't have to be for every one of the, say, 50 members of a group, but

I think certain key members who put in an inordinate amount of time should have some sort of funding, because ultimately I don't think it's sustainable and certainly I think some proponents with deep pockets recognize that and will drag out the process or not come up with good solutions.

I think they're still struggling with the Storrington landfill issue and I suspect partially because they're wearing them down, whereas maybe we could have resolved that situation if they knew that there was full funding and that only a negotiated truce would be possible.

The Chair: Very good. Are there any other questions?

Mrs Munro: I just wanted to ask you a question related to the last comments that were made, and that is your response to the built-in mechanisms of mediation. Do you see these as positive? You were referring to the whole issue of proponents with deep pockets and the fact that in the minds of many in the public there's that notion that this is an endurance test. I just want to know what your response was to the mechanisms in Bill 76 with relation to mediation.

Mr Walton: I don't have enough expertise in that area to answer your question.

Mr Lindgren: The question has been deferred to me. I think mediation is something that everybody supports in principle, provided there are appropriate safeguards to ensure meaningful and comprehensive public participation.

The Chair: Thank you, Mr Walton. I appreciate your comments. Thanks for joining us today.

1400

ECO-COUNCIL OF THE PETERBOROUGH AREA

The Chair: Our next group is the Eco-Council of the Peterborough Area, and that is Jean Greig. Welcome to our hearings. Thank you for being with us this afternoon.

Ms Jean Greig: Good afternoon to the committee. I appreciate and welcome the opportunity to speak to you on this issue. Actually having come in just when Eric Walton was finishing his presentation, I can see that there's an awful lot of overlap between what he had to say and what I have to say. I suppose that's not really surprising, given that we come from a similar perspective as members of citizens' environmental groups in the province. I'll try to not kind of beleaguer the point too much, since you've already heard it, but I will go over it briefly.

Quickly, the way my brief is organized is that I have a summary in the first part and then more detail in the remaining four pages. The first part of the brief deals with our particular concerns about the bill. The second part: I'd like to take the opportunity to touch on what it means to be a citizens' environmental group and what our role is and how changes to the legislation — not only in this case, but also in some other cases of legislation — affect us particularly and the role we play in society. That's a bit more of a philosophical note at the end, but I think it's important that there's that understanding and that context for the concerns we have.

I represent the Eco-Council of the Peterborough Area, and we're a grass-roots citizens' environmental group.

We've been active in the Peterborough region for about six years. We're volunteer-based and we've been involved in a wide range of different activities on the local level, on the regional level and on the provincial level — everything from making contributions to provincial policy and speaking in front of committees like this to being quite deeply involved in local planning initiatives and playing a public education role in our community on quite a wide range of environmental issues.

Over the past year or so we've been watching with some concern the changes that are happening in the province to a lot of our environmental legislation and regulations, and recognizing the need to be more cost-efficient, to make processes less cumbersome, quicker. We recognize that streamlining may be important, that there are ways of making things more cost-effective and more efficient. But we've seen, in our opinion at least, that in the attempt to do this streamlining and cutting costs we're eroding some of the most fundamental environmental protection mechanisms we have and also some of the democratic rights we have as the public to participate in environmental decision-making. Our concerns around Bill 76 stem from the same general concern we have about legislative changes to other pieces of environmental legislation.

There have been a number of flaws in the bill which have been pointed out by other parties, and our critique has been limited to two: first, as you've heard before, the issue of development and approval of binding terms of reference; and second, the whole issue of public consultation in relation to the EA process.

Our first concern very much echoes what Mr Walton was saying: Effective EA involves a number of essential requirements. That includes determining the need for and the purpose for an undertaking, looking at the full range of alternatives and alternative methods, including the null alternative, and then also looking at all the full range of environmental impacts — environmental in the broadest definition. These essential requirements of EA ensure that the process is preventive, that we're looking at the problem beforehand and that we're finding perhaps not the best but a better environmental answer to a particular opportunity.

In section 6 of the bill, there is a provision for the development and approval of terms of reference that direct preparation of EA. That's fine. The fact, though, that the minister can then approve terms of reference that do not necessarily include all of those essential requirements of EA is very disturbing to us, for the same reasons that have been stated before. Well, I'll go on further: Not only can they be approved without necessarily containing all the essential EA requirements, but also the development of those terms of reference can be done without public involvement, essentially behind closed doors, and those terms of reference, once approved, are then binding.

The scenario is that the minister meets with proponents behind closed doors to develop terms of reference. They may not include the assessment of alternatives, perhaps discussion of mitigative measures, any of the essential requirements. They are approved by the minister and then when the public does have an opportunity to get involved

in the process, it's already prescribed in such a way that some of the key issues and key investigations that the public would like to see happen are not part of the process and there does not appear to be any recourse for the public to then go back and say, "Hey, wait a minute; you're missing some essential steps here."

We recognize that this is probably not the intent of Bill 76, but it does, as the bill is currently written, open the door for that kind of abuse. We feel that the public shouldn't have to rely on the goodwill of politicians and proponents to ensure that a full EA is going to happen or that the public will perhaps be let in on the process of developing the terms of reference. As it's written, we feel the bill threatens the foundations of effective environmental assessment in Ontario and makes the process uncertain, unpredictable, inconsistent — potentially, at least — and open to abuse. It also increases the likelihood of long and expensive delays that are the result of groups like ours, for example, feeling that we've been shut out, that the process is not as full as it should be, and having to turn to other, more adversarial means of making sure that a full EA happens and the integrity of the EA process is preserved.

What I'm saying is that by making it vague, making it open, making it inconsistent or potentially inconsistent, there could be a longer-term cost just in people fighting back to say, "No, we have to have full EA; we have to have integrity of the process." Our recommendation would be that the bill should be amended to: first of all, require public consultation during negotiation of terms of reference, and that this be required prior to the submission of those proposed terms of reference to the minister; and second, to ensure that only terms of reference that include all the essential EA requirements can be approved by the minister, so that a deficient EA process is not approvable. We feel that by putting that in the legislation we'll make the whole process more certain, more dependable, less open to abuse, and will avoid the possibility of future conflict, delays and expenses when citizens' groups feel they have to fight back.

Secondly, the public consultation issue: As was discussed a little bit earlier today, full public involvement from the very beginning stages of environmental decision-making, including environmental assessment, does a couple of things: It ensures that the process benefits from a full understanding and incorporation of public concerns about the undertaking and it helps to avoid the delay and expense of conflict later if parties feel that they haven't had the opportunity to express their concerns or that their concerns have not been heard. It benefits the process informationally, but it also benefits the process in ensuring that all parties feel involved from the very beginning and avoiding conflict in future.

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Our feeling is that the provisions for public consultation that are in Bill 76 are in some cases vague and in some cases absent. We've already discussed and I've already pointed out the need for public involvement during the development of the terms of reference, a requirement which appears to be completely absent from the bill. More generally, the prescription for public consultation in general through the EA process is there in

a small way, but it's fairly vague. Section 6.1 says that "the proponent shall consult about the undertaking with such persons as may be interested" when preparing an EA process.

There are several questions that come out of this: Who qualifies as an interested person? That doesn't appear to be defined. What is the nature of consultation? Is the notice on the EBR registry enough or does it have to involve some more? An open house etc? In the statement itself it says they shall consult about the undertaking. Does that mean they only have to consult about the undertaking itself and not alternatives, environmental impacts or mitigative measures?

That statement needs to be fleshed out. It's fairly vague and it could potentially be fairly narrowly construed, and that's our concern; not that it will in every case, but that potential is there. Much like with the terms of reference, it may not be abused every time, it may not be abused very often, but the potential is there and it makes the whole thing less certain.

The other issue about public consultation that has already been discussed quite a bit this afternoon is participant or intervenor funding. We also agree that there needs to be a requirement for mandatory participant or intervenor funding, and as has been explained, most citizens' groups that get involved in this kind of process, such as ours, have very few resources. Trying to find the money to pay a lawyer, a technical expert or even somebody to have staff time to research the issue and write briefs is almost impossible. If there is no provision of funding for the participation of citizens' groups, participation can become almost meaningless. The opportunity to participate, although it may be there, becomes almost meaningless.

Our suggestion is that Bill 76 should be amended to: first of all, require and more fully define meaningful public consultation from the very earliest stages of EA planning, including development of the terms of reference and throughout the EA process; and second, require mandatory participant funding and intervenor funding.

That's the content portion. Those are the two areas that we've focused on, that we feel there should be changes to, that we would like to see amendments to.

I just want to go a little bit into what the role of citizens' environmental organizations is, because I feel that especially over the past while maybe there's not been a very good understanding of what citizens' groups are and what they do and why these kinds of issues about clarity and meaningful opportunities for involvement enshrined in legislation are so important to us.

We're a citizens' environmental organization, the Eco-Council of the Peterborough Area, and we're similar to many of the 700 or so citizens' environmental organizations across the province. We're loosely organized. We don't have any staff and we don't even really have an office; we have a phone line. We're all volunteers and we have very little money. Most of the expenses we incur, things like photocopying or phone calls, are paid for out of our own pockets. We do our work around everything else that we do in our lives, of course, like work, take care of our kids etc. Usually we work over the phone late at night, that kind of stuff.

We are not a special interest; citizens' environmental groups are not a special interest. I believe that citizens' groups have been characterized as such over the past year or so by our current provincial government. We are members of the public who are concerned about the health of our community and are concerned about the natural environment within which all of us — not just us in the groups but all of us — live. We are not a vested interest. We have no vested interest. We are working for the public interest. We have very little power — political, financial or any other kind — except that which we get by working together as active community residents.

Citizens' groups are the public — I think that's really important to understand — and we're committed to defending the public interest. I would just like to point out that if there's any doubt in anybody's mind that environmental protection is in the public interest, you only have to look to the number of polls, four, five, six, over the past months, that have indicated over and over again that Ontarians expect and are committed to strong environmental legislation and regulation.

From our perspective as a small volunteer group that is working for the public interest, our effectiveness as a public advocate depends on a couple of things. It depends on clear, predictable legislation and meaningful opportunities for public involvement in environmental decision-making. Without any political or financial power, really the only support that citizens' groups have to lean on to allow them to be effective public advocates is a clear and dependable environmental legislation framework. In the face of any real conflict it's our only recourse, because we can't fall back on money and we can't fall back on political power. We have the legislation that supports our defence of the public interest.

The second thing, the ability to be meaningfully involved in decision-making from the very planning states and throughout the decision-making process helps to ensure that our role as a public advocate is effective; also, that our involvement is as non-adversarial as possible. Maybe I touched on it a bit earlier, but we also touched on it in the discussion about forestalling or avoiding adversarial conflicts between citizens' groups and a proponent or the government if citizens' groups are involved from the very beginning in a meaningful way. For groups with limited or no resources to hire lawyers, technical experts and staff, financial support is also critical.

Those aspects of Bill 76 that we have pointed out aren't just technical problems. For us they erode the only powers we have to participate meaningfully in the EA process. I would say it's similar to many changes in environmental legislation that we've seen over the past year: It's taking away from our ability to be active, effective participants in environmental decision-making. We've always operated on the belief that citizen participation is a pillar of democratic society, that environmental participation and decision-making are critical, and we feel that Bill 76 needs to have some fairly considerable amendment before it too helps to uphold that principle of democracy.

Mr Cleary: Thank you for your presentation. I take it you're not happy with the legislation that exists at the present time?

Ms Greig: We're not happy with some aspects of the proposed Bill 76.

Mr Cleary: You mentioned many times, and again on the last page, that it's eroding the present system. Is that correct?

Ms Greig: The removal of intervenor funding, for example, the removal of a requirement for mandatory participant or intervenor funding, coupled with the non-renewal of the Intervenor Funding Project Act, as I pointed out, takes away from our ability to be involved in a meaningful way. As Eric Walton pointed out, we don't have the resources, we're not getting paid for our work in most cases and eventually we'll burn out and fade away; so yes.

Mr Cleary: You had mentioned too that you're a volunteer group and you mentioned approximately 700 groups throughout the province. Do you have any elected people on your group? Who makes up your group?

Ms Greig: Do we have any elected people in our group? We do have an elected utilities commissioner in our group but mostly they are just citizens. No, they're not elected people; they are just members of the public.

Mr Cleary: You had mentioned that the bill will lead to longer delays. Would you like to explain that?

Mr Greig: It won't necessarily, but it does open the door for that. If citizens' groups feel that they're being shut out of the process, if for example terms of reference are approved that don't contain some critical elements of EA, that don't contain an assessment of all alternatives, depending on whether they can muster the resources, most citizens' groups that are committed to an issue are not going to let that lie. If they haven't been involved in the decision from the very beginning, they're probably going to fight, and that fight is going to incur expense for the process, it's going to take time and it's going to be a hassle. It's much better to have them involved in the negotiation from the beginning, come to an agreement that all can live with and then proceed without further delay because all parties have agreed to the process.

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Mr Cleary: You mentioned a few changes you'd like to see. Would you like to list them again?

Ms Greig: Sure. In the area of the development and approval of binding terms of reference we'd like to see the bill amended to require public consultation during the negotiation of terms of reference prior to submission of those proposed terms of reference to the minister, and amended to ensure that the minister can only approve terms of reference that will produce a full EA which addresses all the essential EA requirements as set out in the existing Environmental Assessment Act.

In reference to public consultation, we feel that Bill 76 should be amended to require and fully define meaningful public consultation from the earliest stages of EA planning throughout the process, and to require mandatory participant funding and intervenor funding.

Mr Cleary: Another thing you mentioned was who qualifies as an interested person. Who do you think should qualify?

Ms Greig: I'm not sure I'm qualified to say. It certainly varies with the situation. If "interested party" is interpreted to mean only those with some sort of finan-

cial, pecuniary interest in an undertaking, for example, and members of the general public who could be affected by the undertaking in a broader way are excluded because of that definition, there's a problem.

Ms Churley: I believe you have outlined the fundamental problems with the bill. Many have been outlined over the course of the last couple of days, but I think those are the intervenor funding and the ability of the government to let the proponent off the hook on looking at alternatives, which of course is the heart of an EA. Essentially what we're doing here, if this bill goes through as is, is that we will no longer have what we constitute a full EA, and therein lies a very major problem.

On the issue of intervenor funding, which I think is just fundamental no matter what happens with this bill, we heard from the Storrington people this morning how they did get some intervenor funding. It's very clear, the abuse and the possible and indeed present environmental problems that resulted from that particular site. If it had not been for that group being so persistent and being able to get intervenor funding, it seems as though we would be dealing, down the road, with multimillion-dollar cleanups, drinking water contamination, so I think that is one example why community groups are so crucial to the process. It's very clear that if you're going up against big companies like Laidlaw and the Ontario Waste Management Association, whom I had an interesting encounter with yesterday — they refused to answer my question — there can be no meaningful participation.

I'm getting to my question here. There seems to be a gap in the understanding of the bill between myself and you and many other people who have been involved intimately in the process about public participation. The minister said yesterday in Toronto, "It's better than ever because we've enshrined it," and members here have said, "There's going to be more public participation," but there isn't. Certainly it isn't enshrined in the beginning of the process in the terms of reference. Overall, I would like to see if you can explain how you see the difference from the government in that they think there is actually more public consultation than ever before, and the implications of no intervenor funding in terms of public participation.

Ms Greig: That's a good question. I don't know. I'm not a lawyer and I haven't combed through the bill for every clause, but it appears to me that while the intent may well be that there is more public participation, and that's an excellent intent, it does not appear to be enshrined in the legislation; it appears to be somewhat vague or, as we say, absent in the development of the terms of reference stage. I wanted to spell out what the role of citizens' groups is and what the reality is, because I have a feeling that there isn't an understanding of that and that there's some sort of misinterpretation of what citizens' groups are or what they do and whom they represent. I think it's really important that this legislation be based on an understanding of the critical role that citizens' groups play and the fact that citizens' groups represent the public interest. Indeed, that should be the role of the government and we should be supported in representing the public interest rather than discouraged or

undermined by the absence of things like intervenor funding.

Mrs Ross: I just want to follow up on the line of questioning with regard to public consultation and intervenor funding and that type of thing. I'm not an expert in the environment, but from what I know of this act, I do believe there is greater public consultation allowed in it. I want to ask you this question: Do you not think that the mechanism that's put in place for mediation early on in the process between the proponent and citizen groups such as yourselves is a good thing that's been put in this act to help solve some of the problems before they go any further, before you need intervenor funding?

Ms Grieg: I'm not that familiar with the section on mediation. I don't recall where it actually says that mediation will kick in. I think that was one concern that's been raised by other groups, that mediation may not be right at the very beginning of the process.

Mrs Ross: You don't really need mediation at the very beginning because you don't know —

Ms Grieg: Presumably, you wouldn't, exactly. Mediation is fine; I think it's good. There may be other techniques as well that aren't just mediation that maybe should be mentioned in the bill, but that's not really my area. I think while the provision for mediation is good, it would be better if there were clearer and stronger provisions for full public involvement from the very beginning of the process to forestall the need to use that mediation. I don't want to throw out the mediation, that's great, but let's not assume it's going to be necessary and we can perhaps ensure that it will be less necessary; it will be necessary less often if it's really clear and very firmly enshrined that the public has a role from the very beginning of the process, including the development of the terms of reference.

Mrs Ross: Let me ask you one more question. With this act, in your own opinion, is there not more public consultation before you get to the point where citizens have to get vehement about opposing something? There are, in my opinion, about five steps along the way where they can get involved before it gets to that point, before you need a hearing or anything. Don't you think that's better?

Ms Grieg: If that's what is actually in the bill, then yes, it's good. My reading, at least of the sections that I've seen, is that it's still vague. It may be there but it needs to be clarified, or it is open to a narrow interpretation and a potential shutout of some members of the public.

Mrs Munro: I just wondered, has your group had any experience in the current EA process?

Ms Grieg: I'm trying to think if anybody has; I was trying to think of that on the way up here. Yes, I guess we have, actually. For example, I have some myself, in two examples where I wouldn't have called us intervenors so much, but we were participants in a planning process that included EA as part of the process.

Mrs Munro: All I wanted to know was, in terms of your own personal experience, what you have experienced under the current legislation in contrast to what you perceive this piece of legislation to cover.

You and many others have talked about the need for public consultation at the level of the terms of reference.

The question was asked of you about who should be included. This is the purpose of this kind of meeting, to be able to look at what are the best-case scenarios, so I really have to come back to that question because you have referred to this as an essential component. What is your best-case scenario of full public consultation at the level of the terms of reference? This appears, from the discussions we are having, to be an extremely important issue. We've heard from community leaders, municipal leaders, who have demonstrated in their presentations the ways they have sought public input. My question to you, as someone representing a grass-roots organization, is, what is your best-case scenario?

Ms Grieg: I guess the best-case scenario is that there be public announcement through the newspaper, through the EBR, perhaps even through some personal contact with, say, leaders of citizens' groups in an area where an undertaking is going to take place, that an EA process is going to take place and that terms of reference are going to be developed, perhaps an invitation to participate — I'm talking off the top of my head, because I haven't really thought this out — in a preliminary meeting, to sit around the table and talk about who the interested parties are, some determination of who should be at the table.

The Chair: We've run beyond our time, but I suggest, because I believe Mrs Munro's question is a really important one, if you think it through and you've got some ideas and you want to submit them by paper, certainly the committee would accept that.

Ms Grieg: Okay, I'll jot that down.

The Chair: Thank you very much, Ms Grieg, for your time and for your thoughts here this afternoon. We appreciate it.

Ms Grieg: Thank you. I appreciate your attention.

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CATARAQUI REGION CONSERVATION AUTHORITY

The Chair: Our next witnesses are from the Cataraqui Region Conservation Authority, Mr Fyfe and Mr Warwick. Welcome, gentlemen.

Mr Stewart Fyfe: I'm Stewart Fyfe, the chair of the authority, and this is Bill Warwick, our general manager.

The authority welcomes this opportunity to appear before this committee and hopes the submission will prove of some assistance in a useful contribution to the provisions of the act.

The authority is in many ways an environmental agency, with a mandate for the conservation of natural resources on a watershed basis. As such, it has some involvement with the environmental assessment process, both as a proponent of flood control works under the provisions for class assessments and as a commenting agency for a range of public endeavours, including the selection of a waste disposal site for Kingston. Not all of our experience with the environmental assessment process has been positive, however, and we're therefore pleased to see consideration being given to amendments.

The authority has two concerns with respect to the present legislation: its administration and its effectiveness. The first relates to the assessment process as such, the

second to the impact of the shortened time frames and other developments on the ability of the authority and other agencies and groups to participate effectively.

With respect to the process itself, there is something very wrong with the present process when it takes over 10 years, several million dollars and a great deal of public controversy not to find an answer to the problems of waste disposal for this area, except to export the waste to Ottawa-Carp, Napanee and the United States.

On the other hand, we don't see how it could be realistic to resolve such complex and contentious issues within the less than one year time line contemplated with the legislation. Very early, it became evident that the process was designed to find the perfect solution — that is, the present process — taking every possible alternative into account, with no mechanism to contain costs or to ensure that an answer be found within a reasonable time. Our role, particularly since one of our properties ceased to be a candidate site, was to keep informed and provide information as required, but generally to leave the matter to others who had more direct interest and greater financial, technical and professional resources.

While there are problems with the legislation, difficulties have been related, as much as anything, to how the act is administered. The ministry in some cases has been slow to respond, in other cases gives little guidance as to what is likely to be acceptable, or has thrown the book at a proposal and has required that every step be followed whether it was appropriate or not. The authority's own projects have been small but the costs of advertising and consultation have been disproportionately high in time and money, given the scale and potential impacts of the projects.

In the information distributed regarding the amendments, considerable emphasis is placed on the provisions for tight time lines so that decisions will not be drawn out unreasonably. But both applicants and the public should feel confident that proposals are dealt with efficiently, effectively and fairly.

The public is entitled to be confident not only that their interests are protected but also that the process is fair to everyone. Potential applicants should know what the rules are, what information is available and that applications will be treated expeditiously. This requires a delicate balancing of public and private rights and judgement as to whether improvements in the process and in obtaining information exceed the costs of doing so. The perfect is the enemy of the good, if you like.

Placing tight time lines is very attractive. It is a powerful incentive to sort out priorities and come to a decision. However, experience with tight time lines is that they do not of themselves improve the results and can in fact distort the process to the detriment of the intended results, and ways will be found around them when they do not fit the circumstances. One must look at why the process is deficient. Delays can occur for a variety of reasons, some appropriate, and some explainable but not defensible. A practical concern with some elements of time line is they do not allow for the realities of how municipal councils and other bodies make decisions.

It is one thing to have staff and consultants prepare a report and make recommendations. However, the respon-

sibility for decisions lies with the municipal council. On complex and contentious issues, it is neither desirable nor practical to delegate authority to staff. For important issues, it may be necessary to arrange for public consultation. Most councils meet on a cycle of every two weeks or monthly, but not all year round, and even the largest may not meet every week. For secondary agencies such as conservation authorities and for ratepayers and other groups, the decision process can be more complex and time-consuming. It is necessary to allow for this two- and three-step process, which is inherently different from that employed within the public service, where by law you can authorize ministers and civil servants to make decisions and the authority stops there.

The proposed time lines do not differentiate between different kinds of proposals. As the scale, complexity, quality of information available, number of relevant precedents, number of parties affected and the potential environmental impact increases, it inevitably takes more time to deal with the proposal. Nor can it be assumed that all applicants are equal in sophistication, resources and motivation to take into account public concerns.

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Similarly, the public and interested parties, and particularly public bodies which are required to be part of the process, vary greatly in their resources and sophistication. Local bodies have a strength in their depth of knowledge about the particular area and local conditions, but have limited experience in dealing with comparable problems and have limited resources for analysis. The province has a breadth of knowledge because it sees all proposals, has a depth of professional knowledge and a wider perspective in terms of where related issues cross internal or external jurisdictional boundaries. The problem is how to relate these two levels of decision-making.

It is recommended, therefore, that there be some elasticity in the time lines proposed.

The problems arising from the internal deficiencies in processing proposals, which have been very real, can be related to organizational problems, the quality of staff and style of administration. Unfortunately, it's an iron rule of bureaucracy to be preoccupied with detail, to look at the trees rather than the forest, and as the organizations become more elaborate, this becomes more and more the practice. Legislation can only do so much to change this, but one means is a mechanism for separating the simple and straightforward from the complex and controversial.

The proposed amendments give the minister very sweeping new powers to: approve the terms of reference for an environmental assessment; designate issues to be sent to the review board; designate the time allotment for board review; approve an environmental assessment document without a board hearing; decide that a hearing is unnecessary; vary the decision of the board.

This centralization may be necessary but it would be more acceptable if it were not accompanied by such time lines which make it difficult for anyone outside the ministry to play an informed role. The authority is concerned that the process allow for proper consideration of what are often very complex proposals.

The recent disaster in the Saguenay is a good example of the difficulties that come with dealing with the human

consequences of our activity on the environment. The storm was about equivalent to Hurricane Hazel; there is a probability of recurrence about once every 250 years. Storms of this ferocity or of less but still of catastrophic potential occur very frequently in Ontario; it's just that most of them are rather small in the area they affect or they affect an area which is unpopulated or very thinly populated, so the consequences are very small, that we are aware of. It is part of nature doing its thing. But sometimes nature does dump on Toronto or other places.

The Chair: Everybody else does.

Mr Fyfe: Yes, but it earns it more.

Anyway, if that had happened in Toronto last month, we would not have had the disaster we had in the Saguenay. There is a weather watch, an emergency warning, which is very well developed, and the authorities act as the local coordinating agency for that, so there would be more warning for evacuations, removal of valuables to upper floors and what not, so you wouldn't have had to call in the Red Cross and the army helicopters quite as much.

There is a well-developed system of identification of flood risk through hydrological studies of river systems. There are preventive and remedial measures in place, such as the regulation of development in the floodplain through the work of conservation authorities and the local municipalities.

There are studies of channel capacity and development of rule curves as to how dams should be managed to at least reduce the flood peaks. There are means to reduce the runoff through stormwater management development, erosion control, wetland protection, reforestation and the development of flow projections to provide design criteria for roads, watermains, bridges and other public works which, of necessity, often have to be located in or next to a floodplain.

These measures have developed over 50 years and have been given impetus by such high-profile events as Hurricane Hazel and the Grand River floods of 1974.

There is work still to be done, but one of the very important things of environmental process is the information that is generated that makes these measures possible is built into the environmental assessment process, providing design criteria, identification of risks. This is made available to the municipalities, to the provincial government, to developers, to the public, and that is part of, complementary to and works with the environmental assessment process.

Lastly, while changes should make the environmental process more efficient and effective, the reduction in resources at the provincial level threatens to leave a void, as is already occurring in land use planning, weakening the process. At one time, the primary activity on some environmental matters could be left to others. This is no longer possible. Because of changes, the others are no longer there or have given notice that they're not going to be there much longer or that they have not the depth of resources to do the work they once did.

Conservation authorities and other local bodies have a responsibility under their mandate to fill some of this gap. However, while the need continues and the will may be there, the flesh is weaker because of reductions in

funding and the pressures to increase responsibilities in other areas.

Further, local agencies can only fill this void to some extent. The resources are already under stress, with lower revenues and greater responsibilities. There are some things which by the very character of local government, even the largest and most sophisticated agencies have not the professional resources, the breadth of experience nor the geographic jurisdiction to carry their end of the process by themselves.

The Chair: Mr Fyfe, thank you very much for your presentation. We will now begin the questioning with the member from the NDP.

Ms Churley: Mr Fyfe, how long have you been involved with the conservation authority? It sounds like a while.

Mr Fyfe: Twenty years, and 25 years with local government town planning before that.

Ms Churley: You sound like you have a lot of experience. I think some of your comments are well taken. Obviously, from your experience on both levels, you know where the pitfalls lie, and I think, reading between the lines, you also know that while there has to be some improvement to the act and some changes to make it more current, a lot of environmental issues such as landfill are never going to be simple. Time frames can work in some of the simpler cases, very tight time frames, but not always, or you can get bad decisions, particularly with budget cuts and not the same level of staff there to do the kind of detailed, technical work that needs to be done.

I believe in a way that's what I'm hearing you say, that it's not that simple and some complications could make it difficult to get a good result in a very tight time frame.

Mr Fyfe: Yes. Very rarely do you find a simple answer to an unsimple problem, and one of the problems at the moment has been in fact the style of administration.

Ms Churley: In fact, we don't hear a lot about this, and this too is complex, but most of the delays in EA come at the government review period of an EA for a variety of reasons. Tightening time frames is not a bad thing, it's just that there are lots of things to consider in that process.

Mr Fyfe: You must be realistic in your time frames, and I think one device that would help would be to have categories with different time frames formula or have some elasticity in the time frames so you can allow more in a very complex or very contentious issue or in an area where you just have very limited information, it's unique, you haven't bumped up against it before. Knowledge is changing very quickly in these areas and the problems are too.

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Ms Churley: You alluded at the very end of your presentation to budget cuts that all governments have been experiencing for a time now. I know that under this government the conservation authorities have been deeply cut. I don't know if you want to go into that here or not — I think your approach to it here was very gentle — but do you think that those cuts to the conser-

vation authorities have begun to or will impede your ability to do the very important environmental protection work and remediation work that you do historically?

Mr Fyfe: It cuts in various ways, but one thing is it's not only a cut, but you have these other responsibilities coming down on you as the boundaries between provincial and local responsibilities shift, so we had to lay off 40% of our staff this last year. In that, one of the people who went was a geologist, who is very relevant to this kind of work.

Ms Churley: So who fills that gap?

Mr Fyfe: We hope we can phone somebody and get some advice for free or we try and cut in other areas, or you try to concentrate on what you think is the most important part.

Bill, do you wish to add?

Mr Bill Warwick: You're not far off the mark. Actually, we have been using a lot of volunteers. We've actually had engineering firms that have offered free services on specific issues to assist us. We have cut back on other areas of our operation in order to concentrate our effort in sort of environmental protection. But it's getting very, very difficult, no question about it. The other thing —

The Chair: Ms Churley — I'm sorry.

Ms Churley: You can follow up on that.

The Chair: Mr Pettit and Mrs Munro.

Mr Pettit: Thank you, gentlemen. I would like to stay with the time frames. I have your concern too, that tightly mandated time frames sometimes may cause a problem, so there may indeed be a need for some elasticity there on time frames. But that aside, would you agree or disagree that when you have clearly defined terms of reference in conjunction with earlier public involvement that those two things will make the review process easier and more timely?

Mr Fyfe: They should clear away a lot of the underbrush, if you like, at the beginning, and you can focus on the areas where you need more information about what are the most critical issues. But time lines, my experience is it's surprising how you can get around them. The British tried to put in time lines which were very, very tight on planning approvals at one time. They found what happened was just everybody said: "No. You don't like it, see you in court."

Mr Pettit: But you would agree then that some of the amendments that are in Bill 76 will to a certain extent rectify the time problem that we face now?

Mr Fyfe: Yes.

Mrs Munro: I want to compliment you on having a look at a particular area of this legislation that hasn't received perhaps the attention that it should have, but very often we come back in the discussions to the whole issue of public participation. You raised the issue here in the last sentence of your first page about the cost of advertising and consultation being disproportionately high in time and money. I found this germane to so much of the discussion that we've heard today and that is the concern to have some kind of threshold of public participation. One of my concerns about establishing a threshold is that it becomes at the same time the minimum and the maximum, and does it always serve the best interests of

the particular issue being examined. So when you have this comment here about the disproportionate cost, I just wondered if you would care to comment on the whole notion of having a threshold of public participation and how you can build in the flexibility that perhaps you're suggesting here.

Mr Fyfe: I think one of the problems that the legislation overlooks is that for the environmental class assessments you're dealing with public bodies, and particularly at the local level. We're dealing mostly with quite small municipalities.

Mrs Munro: Yes.

Mr Fyfe: The local community knows about the project even before — long before — and we do not go ahead without the local approval of the municipal council. So there has been a fair amount already, and then to go through an additional advertising and the special committee added on to all our other things which are open — it's a public information session but I don't think it adds much and it selects particular types of projects from others, which you do all kinds of other things, but you don't have to go through such a dramatic process, which are just as important or maybe even more important. For the public to participate, they have an opportunity to be informed and they have to have an opportunity to be there when a decision is made, and it's very difficult to go much beyond that in legislation.

Mr Cleary: Thank you for your presentation, Mr Fyfe. I hear occasionally from conservation authorities these days. I happened to be on one for many years, and past chairman. You outlined some of the problems you see with the legislation. Is there anything else you'd like to add to what you've said?

Mr Fyfe: No. One of the difficulties is you're looking at this piece of legislation, which is only one part of a series of things which are of other pieces of legislation which make the whole regulated environment process, and it's hard to pick out one particular piece. There's a ripple effect. If you do something to one thing, it affects all the others, and all these others are being affected at the moment.

Mr Cleary: As former municipal politicians we were always criticizing all levels of government for not making decisions in a hurry, so I can't be too critical of that part of it if things get done faster.

Mr Fyfe: Sometimes you shouldn't make decisions in a hurry.

Mr Cleary: Not in a hurry, but the way it drags on for year after year after year, I don't have time for that myself. Life is too short.

The other thing: You had mentioned earlier about 60% of your staff. Are you privatizing some of your operations now, too? I know that down our way that's what they're looking at.

Mr Fyfe: There's some, but there's not very much we can privatize because we don't have campgrounds, we don't have marinas, we don't have ski hills. There's a limited amount of privatization of boat rentals, some maintenance of areas, but not much.

Mr Cleary: So, in other words, you're dealing with your funding cuts through more volunteers?

Mr Fyfe: Somewhat more volunteers; reduction in standard of work, obviously. You can't do the same kind

of work and then you have to sort out your priorities rather more. But we are finding that there are volunteers coming forward and there are people coming forward offering donations of money and land and help in various ways. We are very fortunate in some ways on the technical side that we have a really good working relationship with the university in biology, coastal engineering, mapping and a variety of other technical things in biology, which gives us resources which most authorities five times our size would not have.

Mr Cleary: Do you think you'll have a closer working relationship with natural resources now?

Mr Fyfe: It's hard to relate to people who aren't there.

Ms Churley: There's hardly anybody left at natural resources.

Mr Cleary: I knew that was what you were going to say.

Mr Fyfe: The 800-number doesn't work when nobody answers the phone.

1500

Mr Cleary: No, no. I understand that.

I'm going to ask you, you had been critical of the legislation, so what would be a couple of the most important issues that you feel would concern conservation authorities?

Mr Fyfe: Confidence that the process is working well, that you had a system which was workable and you could follow and track things and intervene where necessary but not have to intervene unless other people worked there or something was going wrong. I don't know if you saw the program last night on The 5th Estate about the Philip's dump in Stoney Creek, where all kinds of commenting bodies seem to have evaporated at various stages, including the conservation authority.

The Chair: Mr Fyfe, Mr Warwick, thank you kindly for sharing your views and your experience with us this afternoon. It's much appreciated.

KEALEY CUMMINGS

The Chair: Our final witness for this afternoon here in Kingston is Mr Kealey Cummings, if you would come forward, Mr Cummings.

Mr Kealey Cummings: I'd like to thank the committee for the opportunity to make a presentation. I'm not here representing any particular group. I'm an individual who has been extremely active for many years in the area of health and safety and overall protection of the environment and I felt compelled to come forward to set out my views.

Referring to the paper which I've put before you, my interest in health and safety along with environmental protection of the workplace dates back to the mid-1950s when, as president of the Ontario Hydro workers' local union, a joint health and safety committee was negotiated. The results of these negotiations established that working rules could only be changed, if safety was involved, with the union's agreement. The local to this day maintains an active approach in protecting its members.

In addition to my activities at a local level, I also played a role in the following organizations: labour representative on the Ontario Labour Safety Council,

which by the way was the first one established in Ontario — it was a tripartite body — between 1965 and 1969; member of the health and safety committee at the founding of the Canadian Nuclear Association in 1960, again a tripartite body; representative on the Canadian Labour Congress occupational health and safety committee from 1957 to 1978; founding member of the board of governors of the Canadian Centre for Occupational Health and Safety between 1979 and 1985; and founding board member of the Canadian Labour Market and Productivity Centre between 1980 and 1985.

Presently I sit as a labour representative on the Ontario Hydro board of directors, now in my second term. As a board member I have sat on the health and safety committee, the environment and public policy committee and the nuclear review committee. In each case there is a clear relationship not only to the health and safety and working environment of Hydro employees, but in many respects the same conditions for all Ontario citizens.

It is with this long-standing understanding and commitment to the environment that I appear before you today.

Looking at a bit of philosophy initially, the purpose and role of government and Parliament in relation to the environment: History has proven the world over that the only way to surely protect the total environment in all its aspects is to establish and maintain strict rules and regulations. It is also clear that the key to success relies on a system of inspection with adequate staffing and funding to closely check against any violations.

When workplaces, air, water and the introduction and control of products are not regulated, tragic results have caused millions of deaths, the scarring of nature never to be repaired and the impact on the whole of mankind yet to be fully understood.

Prior to commenting on Bill 76, I feel it is necessary to make some general remarks about the impact of government actions which cannot but have a major impact on the health and safety of workers in the workplace and the general impact on the environment as it applies to all who live in Ontario.

The overall program to cut \$8 billion from the operational cost of running the provincial government while cutting taxes and drastically reducing services in a program of slash and burn is not only disturbing but in many cases destroys proper servicing levels.

In this ministry the cutting of the budget by 36% was more severe than in most ministries and in turn caused related cuts in many interconnected areas. To mention a few: a 70% cut in the funding of the Ontario conservation authorities; terminated the funding for the popular blue box program; killed the green communities program; eliminated new funding for the municipal assistance program; withdrew the ban on the construction of new garbage incinerators; killed the Ontario Waste Management Corp and the hazardous waste reduction strategy; killed intervenor funding; passed legislation to eliminate environmental safeguards in the Planning Act.

In addition, in a recently released 72-page report, a new deregulation program is proposed which, if implemented, will turn the clock back, as far as protection is concerned, 50 years or more. Public comment is requested by September 15 during this normal summer

doldrums period, almost as though to hide these drastic changes.

In other ministries changes were made in areas which relate to health and safety and the environment: for example, the abolition of the Workplace Health and Safety Agency; drastic changes to the workers' compensation coverage and benefits and the operation of the Workers' Compensation Board; cutting \$27 million and 126 positions from the Ministry of Northern Development and Mines; removal of the need for mandatory inquests for construction and mining deaths; the cutting of \$500,000 from the anti-drinking and driving advertising campaign; major cuts to municipalities which impact on police services, roads, youth programs, sanitation and water purification programs, anti-smoking community grants, community mental health programs and major cuts to hospital programs and related services.

Now to Bill 76, An Act to improve environmental protection, increase accountability and enshrine public consultation in the Environmental Assessment Act. The wording of the title of this bill would almost lead one to believe that, if interpreted literally in the area of environmental assessment, the protection of the public is to be improved and consultation expanded. However, when the details of the bill are examined, the protection and consultation process is weakened or eliminated.

To touch on a few of the points:

Under Bill 76 there's no longer a guarantee that current requirements under the present act for an environmental assessment on landfills, incinerators or many other environmentally significant undertakings will take place.

The minister will have sweeping new powers to improve environmental assessment documents which do not include the essential environmental assessment requirements which are currently mandatory under the present EA act.

Bill 76 will permit private waste companies or municipalities to get approval from the minister without first examining other alternatives to landfilling or redesigned sites or, more importantly, the full social and economic and cultural impact of such sites.

The minister as well has broad powers to vary or dispense with the requirements of the EA act or to grant wholesale exemptions from the act.

The bill is unclear on how consultation will take place, if at all, or who are considered "interested persons."

The minister may under harmonization orders grant wholesale exemptions and thus destroy the need for any environmental assessment of projects by using the equivalency approach in other jurisdictions, thus lowering standards.

The bill does not require the ministry to monitor and report upon compliance with terms and conditions of any exemption declarations.

The bill does not allow any upfront public participation in the development of the terms of reference and allows for the minister to approve terms of reference that do not meet essential environmental assessment requirements, which at the present time are mandatory.

The 45-day period of government review is too restrictive to allow input from all interested persons.

The minister should be required to provide written reasons for the rejection of any environmental assessment.

The director should as well be required to provide written reasons why a finding of an environmental assessment is supported.

The bill gives proponents an unreasonable time frame to decide what will be done to rectify deficient environmental assessments.

Duties and responsibilities of the review agency are not described in the bill.

1510

The mediation process is unclear as to terms of using it at all stages of the environmental assessment, and other means of public involvement should be allowed.

The minister is not required to give any written reasons why matters are referred to any tribunal or entity.

The bill empowers the minister to deny reasonable hearings requested from the public, even if significant or controversial. An example, of course, is the one which was just touched upon, the Stoney Creek dump.

The bill allows a board decision to be varied or reversed without meaningful public notice or comment.

Class environmental assessments could be misused or expanded to cover projects which should receive separate environmental assessment examinations and hearings. No means of monitoring class environmental assessments is covered by the act.

Section 5 of the act should spell out in clear language what the minister will do to enforce compliance when an environmental assessment is contravened.

The act does not prohibit pre-approval site alterations and does not empower the minister to issue enforceable restoration orders even where the environment has been unlawfully altered.

In 1970 the Canadian Environmental Law Association was established, and it has played a major role in improving the laws to protect the environment and to conserve our natural resources. CELA has been outstanding in the development and protection of the Ontario Environmental Assessment Act, in place since 1975, by a previous Progressive Conservative government.

The submission made to this committee yesterday — by the way, if you would add the two words "by CELA" to my brief — set out a list of 12 recommendations as a means to not only correct Bill 76 but also cover many areas already put forward by the Environmental Assessment Advisory Committee. I am fully in agreement with the recommendations they made.

In closing, I strongly urge this committee and the present government to refrain from taking any action which will reduce or diminish any protection or rights of citizens of this province. In an era when we must worry about smog levels, depletion of the ozone levels and UV levels which cause skin cancer, we all have obligations to stop such impacts and to protect future generations. Thank you.

Mr Galt: Thank you, Mr Cummings, for presenting to us and putting forth this thoughtful presentation. I was wondering about your experience and involvement with environmental assessment. Have you been involved in some of this process in the past?

Mr Cummings: You mean as far as landfill sites are concerned? No. As far as the impact on workers and the area related to health and safety matters, yes, I have been involved in a number of hearings where workers have been hurt, have been killed, through inquests, some of it directly relating to the on-the-job conditions, some of it because of the surroundings in which they work.

Mr Galt: You're referring to things where there had been an environmental assessment involvement, like in a landfill site you're referring to?

Mr Cummings: No, I'm not referring to a landfill site. People have been hurt on the job because of environmental conditions; that is, the air and the water surrounding the conditions they work with. I can recall sitting on inquiries into whether a person contracted asbestosis from working on the job.

Mr Galt: On page 2 you make reference that an important part of government is to maintain strict rules and regulations. I hope you've seen our new standards that we've put out on the landfill sites, the requirements for those.

Mr Cummings: I haven't seen the new standards for the sites themselves, no.

Mr Galt: But you would agree that those are the kinds of rules and regulations you're looking for?

Mr Cummings: I certainly wouldn't comment on them without having seen them. I haven't seen them.

Mr Galt: In the past, they hadn't been in place. They had been laid on for certain landfill sites, specific sites. This is one that's generic and coming out with those kinds of strict rules and regulations that you're referring to.

Mr Cummings: If it fills the requirements in all situations, it's obviously a good move.

Mr Pettit: On page 4 you mention that the bill is unclear on who are considered "interested" persons. We've heard this before in the last few days and I'm not so sure anyone has answered the question, at least to my satisfaction. Would you define for me what you would consider to be interested persons?

Mr Cummings: First of all, I didn't write the act; I didn't put those words in it. At the present time, under the present act, there aren't limitations as to people being able to come forward and comment on any particular project that is being assessed by the government. I don't think we should put wording in there that in some way may restrict the public involvement. I'm afraid without describing who interested persons are, you could limit that.

Mr Pettit: Do you have a description of what interested persons are yourself?

Mr Cummings: No, I do not have one.

Mr Doyle: You say you don't think there should be limitations on who should be an interested party. I find that a little difficult to accept, because you could have somebody come in from another province and complain to something. The process of course would go on endlessly if that were the case.

Mr Cummings: I wouldn't expect that people from other provinces should have a right to comment on a site in this province, no more than we should have a right to comment on the environmental assessments —

Mr Doyle: But there has to be, would you agree, some kind of limitation on who an interested person is?

Mr Cummings: I would certainly agree that people from other provinces shouldn't have a right to make comment on sites in Ontario.

1520

Mr Cleary: Thank you for your presentation, Mr Cummings. It was very thoughtful. You touched on a lot of issues there. I for one agree, and I'm sure you do too, that the residents of Ontario expect clean air, fresh water and inspected food. Without that we don't have much of anything, and we would hope no government would stray beyond those boundaries. Are you satisfied with the present legislation?

Mr Cummings: As far as individuals who are putting forward an assessment under 5(3), where the present legislation requires the presenter or the proponents to not only make a request but to set out alternatives I think is extremely important. That is missing from this legislation. It's not only the matter of saying, "I would like to do X or Y," but I also want to be able to say that X or Y perhaps could have been done in some other way. That is spelled out in the present act under 5(3), and I think that is an ingredient that is lost here that should be included.

Mr Cleary: I'm going to ask you now what changes you would like to see in Bill 76.

Mr Cummings: As I mentioned in the second-last paragraph, I had the opportunity of reviewing the material submitted by CELA. I certainly don't want to say that I measure up to their broad skills or experience, but having read a summary of their presentation and also a list of their 12 recommendations along with the subparts, I would endorse totally the submissions and the 12 points put forward by CELA.

Ms Churley: Thank you very much for your presentation. You have reiterated for the committee many of the same concerns that others have raised, and I think we are starting to see a pattern in some of those concerns.

I want to take my couple of minutes, however, and come back to a question that's been asked by members of the governing party to a couple of people now about what you think "interested" parties should be. I would say to the government members that to ask people, laypeople in particular, who are coming in and giving you their analysis of the bill to come up with answers for that right here and now is a very difficult thing to do.

I want to give a little advice on that. I think the bottom line we should take into account is, let's start with the premise that the terms of reference will not be done in secret behind closed doors with a proponent, which is what would happen now. So if we start with that premise and go from there, and I would suggest that the parliamentary assistant go back to officials, some of whom are here, and say: "This is becoming a recurring theme."

People want some kind of definition of who interested parties might be. I heard proponents raise that as an issue as well, that it could be a real problem. They didn't know how to define it. Somebody suggested there could be lawsuits over it. It is a major, fundamental question we're talking about here. I can see your interest in wanting to

hear people's points of view, but I think we should start from the premise of what I already mentioned.

I'd also refer you to CELA's recommendations, number 16. They do make a stab at identifying. You could take it for granted that "interested persons" would be people who live in the surrounding area, for instance, local environmental groups. There are some you can take for granted, and then you have to move beyond that and consult with people about what this means, because it is such a fundamental question, bigger at first blush than you might imagine — like, who are these kinds of people going to be? Because you're right; they can't be everybody. You have to contain it somehow, but you also have to make sure that it's fair and open to — is my time up?

The Chair: No. Some people may want me to say yes, but —

Interjection: Getting closer all the time.

Ms Churley: I came back to this because I think the question is being asked in good faith. I don't think you are trying to put people on the spot. It's been raised a lot and I think it's at a stage where we do want to hear from people about what it means to them. But the government needs at this point, because it is such a major question, to show some leadership. Perhaps the parliamentary assistant could come back to the committee, and I would request that, with some suggestions as to what the government means by interested parties, so that people would have some reference point.

I don't know if you want to comment on my comments.

Mr Cummings: The only comment I would make is that the whole area of the environment is much too sensitive an area to be restricting. If we are going to err, I think we should be erring on the side of much broader involvement.

There are soups being developed out in the environment now by chemicals, by things that exist that no one understands, and sometimes it takes 10, 15, 20, 30 years to come to a point where we know it's damaging the public health. If we're going to restrict input and involvement, we're going to have damage to all citizens. We all know, in the last few days, about the smog warnings and the high UV ratings and so on. When we were a little younger and my hair was a different colour, we didn't know what UV ratings were. Other than going to Los Angeles or, I'm sorry, Sudbury, having worked in Sudbury, for some of the yellow air, we didn't understand what smog meant. So in anything that we're doing from here on, I think we have an obligation to err, if we're going to err, on the side of allowing greater involvement.

The Chair: Mr Cummings, thank you kindly for coming here today and sharing your views with us. We appreciate it very much.

Mr Cummings: Thank you for the opportunity.

The Chair: That's the last witness for today. A couple of housekeeping items, if I may, for the committee members. For those of you who are flying back to Toronto, cabs will be downstairs at 10 to 4. There have been some revisions, as you know, to the Thunder Bay agenda and the clerk has rearranged flights so that the flights you see now won't be as late. They will be earlier, which may please people unless you had made other arrangements in Thunder Bay.

Interjection: Was that earlier in the morning or earlier in the afternoon?

The Chair: No, earlier in the evening to return to Toronto.

On Monday we resume in our home room, which is the Amethyst Room, room 151 of the Legislative Building, at 10 sharp.

Mr Galt: Is that a change in location to the Amethyst Room?

The Chair: No, that's usually our home room, the Amethyst Room, 151.

Ms Churley: Video lotteries took it over this week. They had priority over the environment.

Interjection.

The Chair: Those times have already been arranged for you, so if you want the details, speak to the clerk.

Can I raise a question? You asked informally and your response heretofore has been that if you'd like to request something, could it be put in writing and you would respond. Would you welcome that?

Mr Galt: It makes it much easier if it is in writing.

Ms Churley: I'll present it on Monday.

Mr Galt: Okay, or if you deliver it to me now, we'll see if we can have something for you by Monday. Just scrawl something out, please.

Ms Churley: Then I will formally do that.

Mr Galt: We attempt to please.

The Chair: Good. My final comment is that any members are encouraged to please feel free to share your feedback with me on my role and how I dispense my duties. I try to behave in the most non-partisan manner possible.

Interjection: You're about to be fired.

The Chair: Thank you very much. So we are adjourned until Monday morning.

The committee adjourned at 1527.

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 Mr Bruce Smith (Middlesex PC)
 Mr Bud Wildman (Algoma ND)

**In attendance / présents*

Substitutions present / Membres remplaçants présents:

Mr E.J. Douglas Rollins (Quinte PC) for Mrs Ecker
 Mr John C. Cleary (Cornwall L) for Mr Gravelle
 Mr Doug Galt (Northumberland PC) for Mrs Johns
 Mr Jim Brown (Scarborough West / -Ouest) for Mr Jordan (*afternoon*)
 Mr Dalton McGuinty (Ottawa South / -Sud L) for Mr Kennedy
 Mr R. Gary Stewart (Peterborough PC) for Mr Newman
 Mrs Lillian Ross (Hamilton West / -Ouest PC) for Mr Preston
 Mr Ed Doyle (Wentworth East / -Est) for Mr Smith
 Ms Marilyn Churley (Riverdale ND) for Mr Wildman

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Staff / Personnel: Mr Ted Glenn, research officer, Legislative Research Service



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Journal des débats (Hansard)

Lundi 12 août 1996

**Standing committee on
social development**

**Comité permanent des
affaires sociales**

**Environmental Assessment
and Consultation
Improvement Act, 1996**

**Loi de 1996 améliorant le processus
d'évaluation environnementale
et de consultation publique**



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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
SOCIAL DEVELOPMENTCOMITÉ PERMANENT DES
AFFAIRES SOCIALES

Monday 12 August 1996

Lundi 12 août 1996

*The committee met at 1002 in room 151.*ENVIRONMENTAL ASSESSMENT
AND CONSULTATION
IMPROVEMENT ACT, 1996LOI DE 1996 AMÉLIORANT LE PROCESSUS
D'ÉVALUATION ENVIRONNEMENTALE
ET DE CONSULTATION PUBLIQUE

Consideration of Bill 76, An Act to improve environmental protection, increase accountability and enshrine public consultation in the Environmental Assessment Act / Projet de loi 76, Loi visant à améliorer la protection de l'environnement, à accroître l'obligation de rendre des comptes et à intégrer la consultation publique à la Loi sur les évaluations environnementales.

The Chair (Mr Richard Patten): Ladies and gentlemen, we're prepared to begin. Welcome back from the weekend and whatever parts you are coming from in Canada, North America and the world. We resume our hearings this morning on Bill 76 and I would ask the members if they would ensure they have a copy of the revised list of witnesses before them. It says "Revised August 9" on the top left-hand corner of your sheets.

MUNICIPAL ENGINEERS ASSOCIATION

The Chair: We will call our first witnesses, the Municipal Engineers Association, Mr Korell and Ms Llewellyn-Thomas. Welcome. Our procedures are that each witness has 30 minutes, in your case as a group, and any portion of your presentation that is remaining in terms of time is then distributed between the three parties to ask questions of you. Thank you very much for taking time to appear before us and please introduce yourselves for the record, for Hansard. We await your presentation.

Mr Alan Korell: I'm Alan Korell and I'm president of the Municipal Engineers Association. I'm also the town engineer for Sturgeon Falls.

Ms Kathleen Llewellyn-Thomas: I'm Kathleen Llewellyn-Thomas. I'm from the Metropolitan Toronto transportation department and I'm a director with the Municipal Engineers Association.

Mr Korell: Thank you for inviting us here today. I will begin our submission this morning with some general comments and Kathleen will conclude with the Municipal Engineers Association's suggestions for changes to the proposed legislation.

The Municipal Engineers Association is a volunteer organization. We are a professional organization whose main focus is to share information and knowledge and address some issues of common concern to professional

engineers employed by Ontario's municipalities. We have 750 members from 150 municipalities.

We are hands-on practitioners who manage large and small municipal infrastructure decisions on a day-to-day basis.

We are interested in EA reform because since 1981 municipal infrastructure and services have been subject to the environmental assessment process. In the past 15 years some of our members have had bad experiences in conducting EAs that have incurred long delays, high costs and lengthy hearings. This is particularly true of solid waste projects.

In 1987, the Municipal Engineers Association was granted approval of class EAs for municipal roads and municipal water and waste water projects. The class EA has been a benefit to municipal practitioners because of the certainty it provides through a pre-approved process of examining and evaluating alternatives, minimum public consultation guidelines and fixed time frames for review and approval. The class EA process has worked well for municipal roads and water and waste water projects and it may be well worth considering a similar class EA process for some landfill site undertakings.

Because of our very positive experience with the municipal class EAs, the Municipal Engineers Association strongly supports the proposed provisions in Bill 76 which add the same certainty to individual EAs, specifically through the provisions concerning approved terms of reference, enshrined public consultation, fixed time frames and mediation of contentious matters.

We support the emphasis on continually scoping the EA down, taking issues off the table and resolving them until there are only a few matters to be dealt with through the hearing process.

MEA also strongly supports the provisions of establishing class environmental assessment under the act and allowing for property acquisition prior to EA approval.

We support the provisions which permit the establishment of regulations and guidelines to add to the certainty of the EA process and would encourage the ministry to use the new act to draft regulations and guidelines to take the emphasis off the process and put it on the project and protection of the environment.

We have reviewed the legislation in detail and believe there are some areas where it could be strengthened to allow for greater certainty for all proponents including municipal engineers.

Ms Llewellyn-Thomas: I've ordered our comments this morning based on the structure of the bill and not necessarily in order of importance to the association. The first section we've dealt with is under terms of reference.

Section 6 of the act provides for the preparation and approval of terms of reference prior to beginning an environmental assessment. We support the idea of a contained process and scope of inquiry, but we are concerned that the terms of reference have the potential to become costly and time-consuming.

As municipal proponents, we know there will be pressure on us to conduct preliminary testing and studies to determine the appropriate scope for terms of reference. In addition, most responsible proponents will consult stakeholders on the terms of reference prior to their submission for approval. So we need to be careful that we're not just shifting the time and expense and uncertainty of an environmental assessment to an earlier stage in the process. Only time will tell if municipalities and ministry staff can take this provision in the bill and manage it so that it works to keep costs and time frames reasonable. We realize this probably can't be addressed through changes to the proposed bill, but we've mentioned it this morning really as a cautionary note.

There are a couple of changes we would like to see with respect to terms of reference, though. We feel that if the terms of reference are to provide the certainty proponents desire, they must be binding on all parties and decision-makers throughout the process. At the same time, however, we feel they must have some flexibility to allow major concerns not identified early in the process to be incorporated at a later stage without opening the whole terms of reference. We had envisaged this would likely be done through a public liaison committee, or something that would have buy-in to any changes and then they would be submitted to the minister through the proponent.

Our recommendations for changes to the bill are we'd like the legislation to be amended to provide that once terms of reference are approved, they should be binding on subsequent ministerial review, on the minister's decision and on the EA board scope of inquiry. We'd also like to have the bill changed so that the minister could be allowed to amend the terms of reference at the request of proponents.

We have some comments on the section that deals with ministerial review of the EA application. The section that describes the minister's review includes the provision that deficient environmental assessments will have to be remedied within seven days of notice from the director. We understand that the desire in this provision is to prevent poor environmental assessments from being conducted and submitted to the EA branch as trial balloons. However, given dwindling municipal resources and a shrinking municipal workforce and fewer capital dollars for consultants' assistants, we feel that seven days is too short a period to remedy an environmental assessment's deficiencies even if they're only superficial.

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We therefore recommend that the legislation be changed to allow for proponents to begin to remedy deficiencies identified by the director within 30 days from the notice of the deficiencies.

Section 8 deals with the question of mediation. Many municipalities have had positive experiences with alternative dispute resolution through the courts and the Ontario

Municipal Board. However, one of the principles of ADR is that it's carried out on a without-prejudice basis and that positions taken during the mediation are not subsequently revealed or used against other parties.

We are therefore concerned that the EA mediation will not occur in good faith and that their parties won't speak frankly when they're at the mediation if the mediator's report is subsequently made public at the hearings stage. This concern applies to both successful and unsuccessful mediation, and would apply particularly where monetary compensation or similar compensation in lieu of money has been agreed upon.

I guess our position is based on the fact that we would be concerned that there might be precedents set through the mediation that we wouldn't want to necessarily live with in all instances, and we also feel that as engineers we're always more comfortable in a situation where we can frankly deal with a mediator and have all of our information given having no regard for posturing or positioning or gamesmanship that might need to go on at a hearing stage later. We actually feel very strongly about this provision.

It's therefore our recommendation that the legislation be amended to delete the requirement that the mediator's report be made public on referral to the EA board.

Section 12 of the bill deals with the transition between the old act and the new act. In section 12.4 of the bill, it stipulates that only environmental assessments already submitted are subject to the provisions of the old act. We're concerned that the transition needs to be more gradual for environmental assessment processes which may have been going on for many years. This would apply to waste management master plans or transportation master plans, which often take years just to get to the alternative stage.

It would be too onerous for municipal proponents to go back to the beginning of a multi-year process and begin again with the preparation and approval of terms of reference. We suggest a phase-in provision be provided in the legislation. It's been suggested to us by ministry staff that for a multi-year process we could just go back and document what's happened and say that our original study design was our terms of reference, but we're concerned that once we get into that process and submitting something to the minister for approval, it could be that the scope would be widely opened again and we could add years to the process.

We therefore recommend that the legislation be amended to allow for a phase-in period for ongoing environmental assessments which have passed the point where alternatives to the undertaking have been identified, evaluated and a preferred alternative has been selected.

Our final comments are on part II.1 of the bill, dealing with class environmental assessments. MEA is a strong supporter of the concept and application of class EAs. We're very pleased with the provisions permitting them in Bill 76. The municipal class environmental assessment for roads and water and waste water projects expires in 1997 and will need to be renewed shortly. We feel that the changes proposed in Bill 76 will actually make

obtaining a new class EA for municipal projects easier than it otherwise would have been.

However, we do have a concern in some of the wording in this section. Subsection 16(3) in our opinion needs to be clarified. As written, it appears to allow the minister to impose conditions on a case-by-case basis on the application of an approved class EA to any particular undertaking. The section is probably intended to apply only in bump-up situations where the minister could apply provisions for process or alternatives, but in our view that isn't clear. As worded, this section would undermine the benefit of class environmental assessments in that proponents could have the scope of work increased or process changed for a particular undertaking by minister's order.

It's therefore our recommendation that subsection 16(3) be deleted or that it be amended to make it clear that it applies only in bump-up situations.

That concludes our comments in detail. We appreciate the opportunity to make our views known to you and we look forward to working with the new act and with ministry staff to get municipal projects on the rails.

Mr Trevor Pettit (Hamilton Mountain): Thank you, Alan and Kathleen, for your presentation this morning. In your presentation you mentioned how costly procedures are now under the present bill. My question to you is, do you believe that this new bill, Bill 76, will allow municipalities to deal with waste management in a more cost-efficient and effective manner?

Mr Korell: Yes. We think adding certainty to the process and the time frames will help municipalities in the long run. It may take a while to get used to the new system, but we're hoping that it will work better than the existing system.

Mr Pettit: You're hoping it will or you believe it will?

Mr Korell: We're expecting it to.

Mr Pettit: Thank you. That's the question I had.

Mr Doug Galt (Northumberland): An exceptional presentation, very thoughtful, and some of your suggestions we've heard from some other groups. Just to extend on that same question, I was looking at more detail. Do you feel it might cut the costs for all concerned by maybe 50% or a third or do you have any more concrete feelings than just that it will be more cost-effective?

Ms Llewellyn-Thomas: I think it would be really hard to put a number on it in terms of the percentage cost. Where I see the benefit happening, as Alan says, is through the certainty and the time frames, but also the concept of mediation and taking issues off the table as they're resolved. Particularly the thing that has been costly for municipalities and which is such an unknown is the length of time of hearings and the issues that can be brought up during the hearing phase. So the provisions that allow for scoping are extremely useful, and I'm hopeful that we can reduce the cost of these sorts of things by 25%.

Mr Galt: Just getting rid of some of the process and the piles of paper should be extremely helpful.

My second question relates to the transition period. You talked about a phase-in. That has come up before. Do you have any time frame on that? Were you talking maybe six months, 12 months, 52 years, two days?

Ms Llewellyn-Thomas: I'm actually looking at something that wouldn't necessarily be linked to time. I'm not sure how this would be administered by ministry staff, but what I had suggested was that it would be reasonable to cut off environmental assessments which have been ongoing and which have reached the point where they've done their analysis of alternatives to the undertaking, looked at all the different ways of doing it and evaluated them and they've selected preferred alternatives. So in the case of a landfill they'd say, "We know that it will be landfill and it will be in this part of the world" kind of idea and then, if it had reached that point, that it would be able to proceed under the old provisions without having to go back and do terms of reference. It seemed like a reasonable place to cut it off.

Mr Galt: It's kind of difficult to put that into a bill —

Ms Llewellyn-Thomas: I know.

Mr Galt: — but the time frame probably would be more in order. Would 12 months, six months, that kind of thing, seem in order, in that time frame?

Ms Llewellyn-Thomas: I would think we'd probably like 24 months, just given how long these things often go on; 18, maybe, as a minimum.

Mr R. Gary Stewart (Peterborough): You're suggesting that you're concerned that the terms of reference process has the potential of becoming costly and time consuming. When do you feel the public should be involved in regard to terms of reference?

Ms Llewellyn-Thomas: As a proponent myself I would want to check with stakeholders at a very initial level in the preparation of the terms of reference, just because otherwise you'll end up with something coming out of the blue at the end of the day that will remove the certainty.

Mr Stewart: You're suggesting that there should be some flexibility, and yet in one of the areas here you're suggesting that once the terms of reference are set, that should stay the way it is, then as you move down with your recommendations you're suggesting there should be some flexibility when you get closer to the hearing stage. Are you suggesting that it should be quite flexible or that the things that should go to the hearing stage, as the bill suggests, should be a certain group of concerns that can be taken to the hearing?

Ms Llewellyn-Thomas: No. We'd like it to be as contained as possible, that it should just be certain things. Our suggestion that there be flexibility for the minister to amend the terms of reference is really just, if something comes up near the end of your process, to allow maybe one more issue to be dealt with without reopening the whole terms of reference. It's sort of a balancing act.

1020

Mr Stewart: Great. Thank you.

Mr Korell: The other thing is that if you're going to have mediation, if there's going to be a recommendation of mediation and it deals with the terms of reference, there has to be some avenue that it can be amended.

Mr Michael Gravelle (Port Arthur): Good morning. If I may, sticking to the terms of reference area that the government party has been discussing as well, certainly there's no question that all municipalities are under a great deal of pressure just in terms of costs and in terms

of time for projects such as this, so presumably part of the motivation for some of the recommendations you're making is that it will be less expensive.

In the previous week of the hearings there seemed to be a sense — in that the terms of reference are put forward by a proponent, some people would argue there needs to be a much greater definition of what public input there should be.

You said that most responsible proponents would be consulting with the stakeholders before the fact. The fact that not necessarily all would seems to me to be a reason to want to more carefully enshrine that. I just want to get a greater sense from you how you feel about that.

Ms Llewellyn-Thomas: My sense of it is, I would see that the municipalities are going to be accountable to their municipal council for whatever happens. While I say "most responsible proponents," I think probably through your council stakeholder views are going to be made known anyway. I don't think it would make any difference one way or the other if it were actually enshrined in the legislation because I think it's going to happen anyway.

Mr Gravelle: My thought is that because the legislation needs to be, generally speaking, one that is all-encompassing and covers all groups, you might want to be sure that it does cover all those areas.

Ms Llewellyn-Thomas: I would agree with that.

Mr Gravelle: What are some other areas that perhaps aren't in this bill that you would like to see changed in terms of the environmental process? There are obviously some elements that aren't in this bill and I'm curious if for you, as municipal engineers, there are some other areas that you would like to see altered.

Mr Korell: Just in general, anything that makes it easier and faster helps as long as the environment is watched. We take this as a very positive step. I know there has been a lot of discussion, over the years, of changing it drastically. One of the issues was getting it out of the Environmental Assessment Act and into the Planning Act. We're more happy that it stayed where it was. We have a history of working with the staff at MOEE and we're hoping to continue it. Maybe it's a small step, but I think it's an important one to make.

Especially enshrining the class environmental assessment into the legislation I think is a very big step forward. I guess that isn't one that's being generally talked about by the other people coming to these hearings, but we think it's a very important provision, enshrining the class environmental assessment in legislation, because that's one process which municipalities have traditionally used to build their road, waste water and water treatment plants. It's worked very well and we're glad to see it finally enshrined in legislation.

Mr Gravelle: How important do you feel the public consultation process is? I think this is a reasonably contentious part of this particular bill in the sense that there appears to be at least a less well-defined sense of what public consultation will take place, and in terms of the environment obviously it's a sensitive issue in terms of the public having an opportunity. How important do you view the public consultation process to be in a general sense?

Ms Llewellyn-Thomas: I would view it to be extremely important. Whether you consult with the public at the beginning of your process or through the middle of it or at the very end, one way or another you're going to hear from them at your municipal council. The last thing any engineer wants is to have your technical debates and your detailed discussions on the floor of council with all the overtones that go with that.

We recognize that it's important to do early, effective consultation. The bill certainly allows us to do that and in our class environmental assessment prescribes it even more in detail; it gives actual points of contact and numbers of contact and methods.

Ms Marilyn Churley (Riverdale): Thank you for coming to present to us today. I must tell you that I have some different views about this bill than you do. I'm very concerned particularly about the lack of any mention in the legislation of public consultation during the terms of reference period. Many groups came before us already, and I just want to let you know that notwithstanding that most responsible proponents would consult, we have heard horror stories already from groups in some municipalities that have not been consulted with properly and have gone through years of expense and turmoil. I think you have agreed that early consultation is really important.

Having said that, I just want to be clear that you would support having written into the legislation that there must be consultations at the very early stages during the all-important setting of the terms of reference.

Ms Llewellyn-Thomas: We could support that.

Ms Churley: Good. I want to come to the class EAs. From my reading, there is not a very strong definition of what could come under class EA in the bill and I'm certainly concerned and others have been concerned. It rang alarm bells with me when you said you would like to see some landfill come under that, and that is one of my big fears. For different reasons from you, for a whole variety of reasons I don't think landfills should come under that, because creating a landfill is more than just, as you know, putting the right liner in the right hole. What I would like to see is a better definition so that we're looking at more minor, with predictable outcomes, undertakings under the class EA. Would you support that, or how open-ended do you see it being?

Mr Korell: Class EAs, especially for road, water and waste water projects, are very defined. The regulations are made. This is just legislation enshrining them. They're very specific, what can go under and what the process is, so I wouldn't be concerned about that.

We as an association, two years ago at one of our annual general meetings, indicated that the class environmental assessment process could be expanded to small, minor landfill sites. It's essentially a disapproval process. If you're expanding an existing site for a small municipality and there's no real public outcry — it's actually the opposite; the public wants you to be able to expand the existing site as long as you do it properly and it's just a template to go through that allows for public considerations — it's still an environmental assessment process. It's a class process; it's just more defined. The time periods are more defined.

Ms Churley: It's not as onerous as a —

Mr Korell: It's not as onerous, but it can be as onerous. If somebody really objects to it the ministry is going to bump it up to a full environmental assessment. What it allows you to do, if there isn't a lot of public concern that you're not doing it properly, they're fairly confident that you're going about it the right way and you're looking at the proper things and they agree with what's going on, is that at least it allows you to go through with it rather than getting bumped up to a full EA. So I don't see the problem.

Ms Churley: Under this bill there is no guarantee that the minister will bump it up and there's no provision for public consultation around whether it's bumped up. That's one of the problems we have here — if you read the bill you will see — and that's one of the things I'll be asking for an amendment on. The minister has the power, as now. That's not changed, really, but there is a problem with the fact that they're cumulative effects, for instance.

My problem with this is that you talk about minor landfill, for instance, but I believe that you have to look at the cumulative effects of all these things. If you start letting what you consider to be minor ones come under the class EA act, you're looking at all that.

Just coming back again to public participation, you mentioned that a concern you have in the early stages is that this is where the delays may be, that there may be a reversal. Right now I don't think most people are aware, but the delays, for a variety of reasons, come during the ministry review, as you know, and you're concerned that the delays now might come at the front end.

1030

I guess what I'm asking you is, what is reasonable to you in terms of the scoping and public participation so that at the end of the day you have got the best environmental planning possible for a landfill? Because, after all, the pollution that comes from a landfill that's not designed properly can last 300 to 400 years, maybe 600 years, and a few weeks here or a few months there — I know there's a sense of urgency often, "Let's get on with it," and money spent, but what do you think is reasonable so that at the end of the day, people feel that they've been consulted properly, have had input, and you've got the best environmentally sound solution?

Ms Llewellyn-Thomas: I guess in terms of time frames it would seem to me it would be reasonable for a proponent to allocate at least 24 months to the conduct of your environmental assessment, because I don't think any proponent should begin thinking a "We'll start in August and have it over with by Christmas" kind of thing. So I think 24 months would be reasonable, but that's kind of, "How long is a piece of string?"

The Chair: I'm sorry. The time has already passed by. It passes by quickly in these hearings. I want to thank you for taking the time and coming here today and presenting your views. It's much appreciated.

Ted, our researcher, would like to make a few comments here.

Mr Ted Glenn: I've put before you two documents I've prepared. One is a summary of last week's hearings. The other one is some of the press coverage that the

committee received. If you have any questions about the documents, you can just get hold of me at lunch or whatever.

SIERRA CLUB OF EASTERN CANADA

The Chair: Our next witnesses are from the Sierra Club of Eastern Canada. Welcome. Could you introduce yourself, please, for the purpose of Hansard, and begin.

Mr Don Huff: I'm Don Huff. I'm with the Sierra Club of Eastern Canada. I'm sorry I didn't have any written material. I expected someone else would be here in my stead.

The Sierra Club of Eastern Canada has been around for about 25 years, and we're affiliated with the Sierra Club of the United States. I circulated a copy of the magazine which is put out by the Sierra Club International, the red document that you have. Sue Keenan from our office is also here, the woman in yellow.

I've come to this committee somewhat perplexed, as I understand the intent of the announced changes in the Environmental Assessment Act is to make the process more predictable and efficient. With a trend towards even more ministerial discretion, you may well have been the architects of a system which is even less predictable.

I reflect on the United States' planning and environmental assessment experience, which some would argue is a more litigious environment, but it is also more predictable. You know where you stand as a proponent or intervenor, you know what the tests are, you know what the deadlines are and you must meet them. If you don't, you're bounced out of the system. The opportunities for government veto are extremely limited, and the courts act basically as the umpires or referees.

As someone who was on the EAIIP committee and is involved deeply in the timber class environmental assessment, I have concerns about the fact the minister and the EA branch director now have — I wasn't able to get an accurate count, but there seems to be somewhere in excess of about 30 separate levels or opportunities to exercise discretionary powers, and in my view, this could reduce the potential effectiveness and predictability of the process. Heightened levels of discretionary powers do nothing to level or stabilize the playing field, but rather, make it move around a lot more, and where it goes is something that you can only bet on in some instances, I would think.

Another shortcoming of Bill 76 is the fact it doesn't address the issue of upfront intervenor funding. I'd also like to take the opportunity to bring your attention to a situation which exists through the life of this government and the last two governments, and in a pamphlet that I circulated here, which is a Ministry of Natural Resources pamphlet, you will see at the top of page 7 the statement that if significant issues exist at the end of a timber management planning process, the EA act makes provisions for further review. That means a bump-up from the class EA.

It's important to know that despite thousands of these pamphlets being circulated around the province probably for the last, I don't know, 10 or 12 years, and there have been well over 30 requests for bump-ups at my last

counting, and maybe Mr Pautler can give us an exact number, but to my knowledge there's only been one case, and that's the Megisan Lake case, the area northeast of Sault Ste Marie, that's ever gone for any kind of an individual EA, so to speak, on a timber management plan, and even that one was scoped to be a timber management plan of the effects of timber management on tourism, not the effects of timber management on the environment. I suspect we have a situation here which means the Ministry of Natural Resources is reluctant to head down that road because it probably can't describe what the environment is that forestry will have the effect on.

When I look at Bill 76, I also see that there are no specific mechanisms or criteria for the bump-up, and I suspect, certainly from the people I've dealt with over the years dealing with the individual timber management plans, they've gone through the process and they say: "We'll have faith in the Ministry of Natural Resources. We'll work our way through the system, because we always have this outlet at the end." They just don't get it, as simple as that, even if there is a significant problem at the end. So that has to be addressed in some manner.

I'd also point out that the Ministry of Natural Resources is seeking to exempt itself from the terms and conditions of the approved class environmental assessment. I was at a meeting in June over at U of T, where the deputy minister, Mr Vrancart, said that basically the Ministry of Natural Resources will be seeking the exemption order from the class EA on timber management because they don't have the staff to do it. This reminds me of the situation where you have the man who's put on trial for killing his parents who's requesting leniency from the judge because he's an orphan. The Ministry of Natural Resources knew it had to meet these terms and conditions of the class EA for timber management, but it's laid off so many staff it basically can't do it. That's another problem, not within the confines of Bill 76 but something that should be reflected upon I think by the committee.

It also appears to me that this activity, in essence, revoking a board's decision, will be allowed by section 11.3 of this bill. Many people point to the class EA as why the Environmental Assessment Act needs changes, and I would argue that some changes and revisions to the Environmental Assessment Act are probably in order, but I suspect that the timber EA was also an important aspect of — it was certainly considered by EAAC when it made its report 46 or 47. We should also not forget, before we take too bad a look at the class EA, the intransigence of the proponent. The Ministry of Natural Resources, which is a government agency, was the proponent for the class EA on timber management, and when they started that hearing, they did not even have their whole case in front of the board. The board had to take a six- to eight-month break until the Ministry of Natural Resources finished putting its case before the public. Therefore, anybody who was an intervenor in that hearing had an interest in a specific issue, had to ask every question they possibly could because they would never know if they were going to see it again. There had to be a six- to eight-month break. Then the Ministry of Natural Resources put its full

case on the table. So one has to also consider the responsibilities of the proponent in this thing too.

That's the opinion section of my presentation, based on my experience of the timber management in class EA over the last few years. I really can't underestimate the frustration people feel with the unpredictability of the bump-up process. Many people put huge amounts of time and effort into assisting the Ministry of Natural Resources with individual timber management plans. They may not like how things are going, but they're very Canadian about it, they fight the good fight, they cooperate all the way through to the end, expecting that this will happen and it never does. When people have gone through that process once, their frustration and their lack of enthusiasm to be cooperative in the future is really quite heightened.

I've got a couple of other comments to make. It would appear that Bill 76 permits the minister, with the approval of the Lieutenant Governor in Council, to declare that the act or the regulations or the requirements do not apply to proponents or undertakings or classes when it's in the public interest to do so. I don't think that this is right and I think that it's more alarming that these exemption orders will not be subject to the Regulations Act and there won't be adequate provisions for them being gazetted or public notice.

1040

I think it would be useful to establish a regulation prescribing the exemption procedure and containing clearly defined and detailed criteria. You're also going to require greater public notice and tie it back to the environmental bill of rights process.

I think there's also some questions about the content aspects of the EA act. In effect, subsection 2(3) expressly permits the minister to approve terms of reference which do not include the prescribed requirements which are included in the existing bill. In effect, this allows the minister to dispense with the legal requirements to examine alternative methods or alternatives to. I would think that if Julia Munro were here, after her experience with the dump stuff, she'd have some concerns about that.

In a landfill context, this would mean that private or public proponents could be directed not to examine alternative sites or alternative methods. That could include things like the 3Rs programs.

The duty to consult that is established in section 6.1 only kicks in when the proponent is preparing the EA document after the approval of the terms of reference. In fact, these appear to be binding and there probably should be mandatory public consultation before the approval.

Section 8 talks about appointing mediators, but it's not clear to me who's going to be a party to the mediation. That seems to be a grey area that probably requires a little bit more definition.

Subsections 9(3) and 9(8) provide new and further constraints on public hearings under the EA act and it authorizes the minister to dictate the scope and length of a hearing. This power effectively allows the minister to significantly narrow the issues.

Although there are some obvious benefits to this, we also have to remember that we've seen a similar situation

with the federal EA process, and sometimes things have been scoped so narrowly as to be relatively useless, to put it in a non-technical way.

The class EAs I commented on before. I happen to believe that the class EA process is a useful one, but at the same time there has to be some dignity used in it and some attention to the details. Public consultation also doesn't appear to be mandatory in the class EA terms of reference, and I think that needs to be addressed.

Probably the most important comment that I can bring to this session today is my real worry about the bill not having specific mechanisms on the bump-up provisions. What are the criteria going to be? What are the procedures going to be?

I know it sounds like I'm running an old record again, but let's not forget that many environmental assessment processes require enormous amounts of time and energy from average citizens in this country participating to make sure we get the best possible thing we can for the environment, for business and for whatever. To have this process which you can't ever take advantage of because it's just not going to be given to you is a real problem.

I think the class EA requires mandatory public consultation on the terms of reference. It should have a statutory definition to limit the scope of the classes of the undertaking, and we probably should see that the essential elements of the existing subsection 5(3), which is under the old EA act, are reflected in this one, both for the class EA and on the individual project level.

I think there's also some question about compliance. The minister should be able to put some kind of compliance order in place to make sure that once the system is over things are being followed properly. I think that's an area that we've fallen down on in the past.

I guess, after having sat through the last session, I could probably answer Mr Gravelle's question, which is what reforms I think are excluded or things that should be included in Bill 76 which aren't, and I would argue that there should be some consideration — and I know it's an old question of phasing in the application of the Environmental Assessment Act to the private sector. One of the things that we've seen over the years, if you're building a private sector power dam you're not caught by the same type of regulation, the same type of legislative environment, so to speak, or regulatory environment, as Ontario Hydro is.

There should be an enhanced application of the environmental assessment to government policies and programs. Throughout the process you have to deal with cumulative effects in a timber management planning process in particular. But even though you have a class EA approval for timber management, each timber management plan is viewed as a single one. The question is what happens when you get large — the situation can exist where you can have four timber managements come together in one spot with a very large clear-cut in a contiguous corner to each one but each one will be treated separately. That's an example of how you have to deal with the cumulative impacts.

One of the decisions that's confused me about this government is why the Environmental Assessment Advisory Committee doesn't exist. I've watched it over

a number of years. I thought it was never an overly politicized group and I thought it always gave valuable information and had a real insight into how the EA process worked and how it affected the wide range of citizens and interests in this province. It was extremely good value for the money, they were a well-trusted group of people and I never did understand why they were eliminated.

Mr Gravelle: Good morning, Mr Huff, and thank you very much. There's probably a lot to talk about and there's not a lot of time. I want to clarify what you told us about the Ministry of Natural Resources and Mr Vrancart's comment in terms of what they wish to be exempt from. I want to make sure I understand this correctly because it seems pretty dramatic to me.

Mr Huff: It was pretty dramatic to me at the time.

Mr Gravelle: This is at a meeting where obviously lots were present, but perhaps you could again clarify exactly what it was he was saying they had to be exempt from because they didn't have the staff to do it.

Mr Huff: Okay. The Ministry of Natural Resources held a briefing session for people who had an interest in natural resources issues. Everyone was there, from the aggregate producers to the anglers and hunters to the various native groups, the Federation of Ontario Naturalists, the Sierra Club. It was a large, all-day meeting. The Ministry of Natural Resources should be commended for organizing it.

Mr Gravelle: It was a public meeting too, it seems almost.

Mr Huff: Yes, it was a public meeting. There were well over 100 people there. At that meeting somebody asked a question from the floor that they had heard the rumour the Ministry of Natural Resources was seeking to be exempted from the terms and conditions of the class environmental assessment. Mr Vrancart was the deputy minister, I believe. This was June 6 or 7. He said that yes, that was true, they were seeking an exemption order from the class EA on timber management, and the principal reason they were unable to carry out what they were required to do was because of the declines in staffing and budgets.

Mr Gravelle: That's very dramatic. Obviously the implications are dramatic.

Mr Huff: I don't even know if it's happened. The director of the EA branch was here. Maybe he could tell us if it's happened or not. I haven't been able to find out if it has actually taken place or whether the application was made. All I got was a clear statement from the deputy minister that it was their intent.

Mr Gravelle: The fact that he would say that to you, or to the person who asked the question rather — I shouldn't say "casually" perhaps, but in a manner that suggested they obviously were prepared to say it publicly in that environment is pretty interesting.

Mr Huff: He was quite precise about it.

Mr Gravelle: Yes, and obviously we need to find out whether that's the case or not, although obviously what it says in terms of cutbacks, because there's a sort of a self-critical kind of a —

Mr Huff: Yes. It is understandable why they may be forced into that situation with the levels of resources they have.

Mr Gravelle: Would it be legitimate to ask for — I mean, I appreciate this is somewhat — no, it's not really outside; it's certainly within the scope of this committee to get some ruling from a ministry official on that or from Mr Glenn. Would that be an appropriate —

The Chair: Yes. We could ask research to gather the information, or the PA who is represented today.

Mr Gravelle: I'd be curious to see whether there's been any further movement on that because that's —

The Chair: Why don't you hang on to that question till the end and then we can deal with that.

Mr Gravelle: Okay. Fair enough.

The Chair: In the meantime, continue on. You have one minute left, Mr Gravelle.

1050

Mr Gravelle: Many things again: Intervenor funding: obviously an issue of some contention to a lot of people in terms of how it's been used. Can you just tell me, obviously in a very short period of time, the value of it, even the value from a proponent's point of view, because I think one can argue that intervenor funding has got value even for the proponent of the —

Mr Huff: I think intervenor funding is very valuable from a proponent's point of view. Clearly, if people are able to participate in a competent manner, there is going to be some goodwill created between the parties and some ability to create a relationship between people. You're the proponent, this is the intervenor and the whole thing, but at least you know who each other is and you're being treated with some level of respect.

If a project is coming into a local neighbourhood and it's an enormous project, an enormous company or government agency or whatever, the citizens feel relatively powerless in the thing. You really cannot do a responsible job having cookie sales; it can't be done. The question that needs to be answered, though, is setting some criteria for intervenor funding also so it's responsible, because clearly the government or the proponent has some responsibilities to be fiscally prudent at the same time.

I was with the Forests for Tomorrow coalition. We put together five environmental groups from across the province because we realized that was a better way to do it from an economic perspective. There were over 70,000 pages of transcript, there were 441 hearing days, there were 2,100 exhibits, and that was done with much less — about \$400,000, \$450,000 worth of intervenor funding. We had lawyers there most of the time, we had expert witnesses who gave their fees back to the organization. There's enormous goodwill out there. When you consider what that intervenor funding was, spread over the duration and length of time of that, the government probably got good value, if for only the amount of information that was put forward. Some of the positions put forward by our expert witnesses have been incorporated into Ministry of Natural Resources documents and policies now.

Ms Churley: Thank you, Mr Huff. I have said before and I'll say again that I feel this bill is seriously flawed, for a couple of reasons, but one of the major ones is that right at the beginning, during the terms of reference stage, the minister has the discretionary power at that

stage to scope what is going to, at the end of the day, be heard at a hearing. Of course it means that, as you've stated, I believe, the heart of the EA can be ripped out, and I expect will be in many cases, and that is having to look at alternatives to the undertaking, alternatives to the site and that sort of thing.

In my view, if there's that kind of discretionary power there, which there is, it is of fundamental importance that citizens and others who have an interest be involved at that early stage to the extent possible. If the government doesn't accept an amendment I will put forward about changing that and making sure the heart isn't ripped out — would you say that it's therefore fundamentally important that people be involved from that early participation during the scoping of the terms of reference, negotiations around the terms of reference?

Mr Huff: I would agree with you that it's very important and I would go one step further to say that it would also have some practical implications. When you're dealing with a project in a local area, the sooner you get local citizens involved, the earlier you can get people with that local knowledge involved. If you've got a project and you're going to put a landfill in a certain spot, and you start out to do this and you put some work into it through the consultants and whatever, but at the same time somebody else says, "I'm a local well driller and I've been drilling wells in this area for 30 years and I think you may have your modelling off a little bit," it would be worthwhile to have that type of public comment as early as possible in the process. You can't underestimate the knowledge of local citizens across the province, particularly when you have people, quite often consultants, brought in from outside to do the research work.

I've seen Ministry of Natural Resources reports that talk about attributing the number of moose shot on a single road. They've taken an entire district's moose kill and attributed it to that one road because the people who were brought in to handle the data didn't realize how the Ministry of Natural Resources had organized it. The Ministry of Natural Resources people should have caught it.

Ms Churley: I want to move to another area of concern, and that is the lack of resources, the fact that both the Ministry of Natural Resources and the Ministry of Environment have lost substantive resources, both monetary and people. I'm concerned that with time frames and fewer staff even — and in the past the holdup has been at the government review level, not at the level before that — we're going to have bad decisions because there are very tight time frames and if people aren't there to do it and do it well and look at all the impacts, then it seems to me that you're going to end up having some fairly bad decisions made. Part of my question as well is around the discretionary power of the minister or the ministry. Somebody pointed out, and I think I counted a couple more, 36 different discretionary powers in this bill, 36 or more —

Mr Huff: You must count better than I do.

Ms Churley: — to the minister or to the ministry. There is the concern about political influence and extensive lobbying that is now built into the system, which will mean that there will be unfair, unpredictable deci-

sions made, because there's so much discretion built into it for, frankly, political influencing and lobbying to happen. A long question.

Mr Huff: I would agree, generally, yes.

Mrs Janet Ecker (Durham West): Thank you for coming today. I think the reputation and expertise of the Sierra Club has preceded you, sir, and I thank you very much for it.

Mr Huff: I hope its reputation has preceded me.

Mrs Ecker: Thank you very much for taking the time to come and put forward your input on this.

You make the point about public consultation and the terms of reference. I would be interested, based on the experience that you've had with the timber management class EAs and stuff, in what you would see as being appropriate consultation at that stage. One of the things that occurs to me is that I've seen the Environmental Bill of Rights registry, for example, be used very well. Notification of exemption order requests are routinely placed there. I know there are many citizens' groups out there with a great deal of expertise that monitor those kinds of things and respond and take part in that. Is that something that might be how you would do consultation on the terms of reference, or was there something else more specific?

I guess the concern I've got is that if we're trying to take a process and focus in on the issues that are important to the citizens' groups and are important to the proponents, we don't want to have a totally open-ended process at the terms of reference, yet at the same time there are some key issues that need to be resolved at that terms of reference stage.

Mr Huff: I may defer on this. I notice that John Jackson is here. He's truly much more of an expert than I on the public consultation aspects of things. All I could suggest would be dealing with the issue of principles, and the principles are that you want to have those people who are interested in it as early as possible, presumably even before the rumour stage starts, because if the rumour stage starts, then people are solidified in their positions and they already have a perception of how this thing is going to unfold. Anything that has legitimate representation of the people who will be affected by it as early as possible has got to be good, but that's only the principles. Again, I'm not going to talk about the specific mechanism. I'm not prepared to. I don't have those.

Mrs Ecker: Are there comments Mr Jackson might wish to make?

The Chair: He'll have a chance; he'll be the next witness.

Mrs Ecker: Oh, okay.

Mrs Lillian Ross (Hamilton West): I want to pursue that questioning with respect to public consultation. If there were a mechanism in place to ensure that public consultation began at the first step and along the way — it's my understanding it's included all along the way with respect to the mechanism in place already for mediation — do you not think those steps would eliminate or at least discount the need quite substantially for intervenor funding? Because you made the comment yourself that if public consultation was enshrined right at the beginning —

Mr Huff: It would minimize it, but I can't say that it would probably eliminate it. I'm not trying to be cute about that. The point is that to engage in any kind of an assessment of a project, an assessment in the crudest of terms, requires an awful lot of different expertise that is quite often not within the hands of individual citizens. That doesn't denigrate the role an individual citizen can play because you'll find, for instance, that in the dumps battles that were going on through the Interim Waste Authority process it was quite remarkable what resources individual groups brought in. They found well drillers and they found people who taught at the university and knew everything there was to know about a certain type of bird or whatever. It was impressive. But there still will be a need for intervenor funding. The lack of intervenor funding is a serious shortcoming in how we're trying to deal with environmental matters in this province right now. You could argue that it may actually even increase the chance of someone getting ambushed with a problem further down the road because people aren't able to do the front-end stuff.

1100

Mrs Ross: Let me ask you about the time lines. Would you agree that in the new bill there are time lines in place for steps along the way and that this is a better way of dealing with things? Because if you just leave it totally —

Mr Huff: Time lines are good, but at the same time they also have to be balanced with increases in discretionary power. There's an equation there and I'm not quite sure how the equation works out. It's very frustrating when you don't have firm time lines now, and that is one of the things that is impressive about the timber management planning process and some of the environmental assessment planning processes in the States. It begs the question of whether we have picked the right time lines. Again, I'm not the expert to talk about that, but one would hate to enshrine something in regulation and then find out in practice that the timing's not quite right.

The Chair: I'm sorry, our time has elapsed. Mr Doyle, I hope you get on the next round.

Mr Ed Doyle (Wentworth East): That's fine. My question was answered anyway.

The Chair: Mr Huff, thank you for joining us this morning. Thank you for taking the time and for filling in so adequately.

CITIZENS NETWORK ON
WASTE MANAGEMENT
GREAT LAKES UNITED

The Chair: We now call the Citizens Network on Waste Management, Mr John Jackson. Your reputation precedes you. You might want to address some questions that, as you heard, were referred to your expertise. Thank you very much for joining us this morning.

Mr John Jackson: Thank you for inviting me. I'm John Jackson. I live in Kitchener and I'm here today representing the Citizens Network on Waste Management, which is a loose network of citizens' groups across the province who have been working for years on waste

issues. I'm also representing and president of Great Lakes United, which is a coalition of citizens' groups, environmental groups and labour groups from Canada, the US and the first nations.

Today I will be talking about the proposed amendments and this bill from the perspective of waste management. I've worked on waste management issues for 15 years and waste management is often the issue that's thrown out as the reason why we have to make changes to the assessment process.

There is no doubt that we can and need to improve the environmental assessment process, but I think it's critical that we not overstate the problem. Again using the waste issue as the example, we are getting approvals — and we seem to forget that very often in the waste field — for waste issues under the current process. Looking since 1990, in the past six years we have had 10 landfills approved without even going to a hearing, but with the community's full support and with the community accepting that there was no need for a hearing and therefore telling the minister, "Don't bother with a hearing; let's proceed."

These have been for large municipalities: the one I'm from, the region of Waterloo; Windsor and Essex county, for example; from more mid-sized places like North Bay; and from very small places in northern Ontario and southern Ontario. They've also been approved without hearings, again with full community support, for new sites, what are called greenfield sites, as well as for extensions. It is very feasible to get approvals using the current environmental assessment process without going through and getting blocked on it.

In addition, we have had three landfills approved since 1990, with hearings. These are the North Simcoe one, the Storrington one and the Halton one. We've had three that have gone to hearings — only three — that did not get approval: Meaford; the Ontario Waste Management Corp, which I personally spent a lot of years on; and the Steetley one, which the board didn't approve although it's still up in front of the cabinet in terms of what ultimately will happen with that one.

It's critical that we not think this is a crisis in terms of the assessment act and therefore we have to make dramatic changes to it.

An example that's commonly thrown out by the minister to show the failing of the assessment process is the city of Guelph and Wellington county, which has been going on for years. They've been spending a lot of money on it. I've been heavily involved in that process. What's interesting is that each time they've come to a preferred site in that planning process and then ultimately ended up rejecting it, the reasons for rejecting it were because of information that their own technical consultants brought to them that said, "Hey, this is a lousy site, even though we've spent all these years." The most recent turning down, they'd actually started a hearing, the city and the county, when their own hydrogeologist came forward and said: "This thing is going to leak. We've done the studies and it's going to leak." So they withdrew from the EA hearing.

The message from that is we need to make changes to the assessment act process but we don't need to transform

it, we don't need to completely change it. I know we're told that in this case we're not transforming, we're just making some adjustments, but the reality is that there are some fundamental changes being proposed in this bill. I want to focus on two of them that I see as the changes that are fundamental losses to us in terms of making good waste management decisions.

The first is the weakening, and in fact the loss, of the obligation to assess the rationale for the undertaking, what we usually refer to as need, and to fully assess alternatives. It doesn't have to be in the terms of reference. It's clearly stated there that in terms of what the minister approves for terms of reference, that could be scoped out right at the beginning stages, before any discussion begins, before any studies are carried out in terms of need and alternatives.

Also, even if it was part of the study, it can be taken out by the time you get to a hearing in that the minister has the power to say to the board, "There are certain topics that you will not receive evidence on." It's quite feasible that the topics the minister would choose not to have evidence presented on would be need and alternatives.

It does say in the legislation that even though the board doesn't receive evidence on them, it could still comment on those topics, but it would be very foolish of a board to make a decision on the basis of something it had not received evidence on. By saying the board can't receive evidence, you are in effect saying it can't make decisions on that basis.

It's absolutely critical that we look at need and alternatives, for two reasons. First is the money we can waste by putting together proposals that frankly aren't needed or are too large. The Ontario Waste Management Corp is the classic example where all parties ended up saying: "This is a foolish exercise. We shouldn't waste more time on it. We don't need it. The need has not been proven."

In terms of alternatives, we need that there to help move us forward and look for better solutions. One of the reasons we have made such progress in Ontario in reducing the amount of garbage we send to disposal is because municipalities and private proponents were forced to look at alternatives such as 3Rs and therefore we've developed that program much further.

The second area I'm concerned about that will be dramatically weakened in this bill is the requirement for hearings. Again, the minister has a broader discretion than before not to give hearings even if they are requested and the minister is able, even if there is a hearing, to lessen and scope in advance what will be heard in terms of evidence at that hearing, therefore making the hearing much less significant and a much less serious canvassing of the issues.

1110

We are repeatedly told by the minister, "We'll still have hearings throughout this process," yet the most recent example, which I'm sure you'll hear more about this afternoon, is Taro, where despite the fact that there was a petition with 3,000 names on it asking for a hearing, despite the fact that a public conservation authority asked for a hearing, that site has not been given a hearing.

Those then are the two fundamental areas that I'm alarmed about, that make really serious changes in terms of the planning process and the decision-making process we now use for waste management under the environmental assessment process, which would be dramatically changed and weakened.

There are some good directions in this bill, however, and I want to point those out, but the problem is that the good directions themselves, while the concepts are good, have some fundamental flaws in them and therefore need to be revised to make the good concepts work as well.

The first one is inserting the idea of terms of reference. In principle, that is definitely a good idea; we all want more clarity up front in terms of what we're going to do. I look at it as really being a work plan: This is what I intend to do, these are the time lines in which we're going to do it, and we have the ministry and the public agreeing in terms of those time lines.

The problem with the way in which the terms of reference are stated here, however, is that we should not, in setting up the terms of reference, be able to, at that point, scope out certain topics such as discussion of why we need the undertaking at all and discussion of alternatives. That is something that should be sacred to the process, that we should go through, make sure we study and make sure we have full public discussion of. We may agree, as members of the public and the community, that when we get to the hearing point that's no longer an issue, but that's the point at which we scope it out, not before anyone has done any work to know if there are serious alternatives or not, or to know how serious the need is.

The other problem in the terms of reference as stated here, as I've heard said many times this morning already, is that there's no guarantee of public involvement in the development of those terms of reference. That is a flaw that must be changed. But even if there is a guarantee of public involvement, the fundamental problem here is, will those people who could be most directly and seriously negatively affected by the proposal be involved at the terms of reference stage? By that I mean the people who could end up living next door to the site of a landfill or an incinerator. It's very unlikely, because at that point we're not going to know where that facility could be. Therefore, it's unrealistic to think that all of us who are so busy, have a lot of other issues to deal with, have our families, our work or all the other parts of our life to deal with, just because we see a notice in the paper that says, "Terms of reference being developed for waste management plan now. Come out and be involved," why would we come out and be involved? The effect is that at the terms of reference stage, you cannot expect those who will be most directly negatively affected to be out and involved; it's completely unrealistic.

The other area that is a useful concept to introduce is mediation. We all want to work out the problems as much as we can before we ever get to a hearing stage, or avoid a hearing stage if possible. It's not fun for citizens' groups to go through either, just as it's not fun for a proponent. None of us wants to do that unless we have to.

The difficulties in the way in which the mediation process is here is that it puts too much discretion in the

hands of the minister in terms of who will be parties to the mediation and what the topics of the mediation discussions will be, and makes it very private. In terms of the decisions about who the parties will be, what the topics will be, it all happens behind closed doors without community involvement. The effect of this is that you could end up with a mediated agreement which a substantial segment of the community did not agree with, because they were not part of the discussion, they were not involved in it. That's a very dangerous situation to create.

The scoping of hearings is another topic which I'm sure we all agree with. However, again, there needs to be a public process of the scoping of what the topics of the hearing will be, rather than it simply happening in the minister's office or in some bureaucrat's office. Again, I think the Environmental Assessment Board is beginning to set up processes to scope hearings before they begin, and I think that's working well. It's only starting. But I think that's the way you scope: where all the parties are sitting at the table and say, "Yes, let's take these topics off the table; let's limit the amount of time we spend on this topic." That makes a hearing much more efficient and work much better.

Public involvement at an earlier stage: again, a very good direction. To make it work, however, we do have to have not just intervenor funding for a hearing stage; we need participant funding to let citizens have access to resources to do thorough assessments of documents before we ever get near a hearing.

The final thing is time limitations. We all agree with the need to put time frames so that we know when things are going to happen. I'm not confident, however, that we can do that through legislation or regulation, because each situation is so different. I think the point at which we should set up those time frames is when we develop the terms of reference, so the parties sit down together with the ministry and the proponent and the community and say, "Yes, we think these are the reasonable time frames to respond in, these are the times to do it," and that will vary by project. If the time frames are to work, as I've heard mentioned this morning, it is critical that the ministry have the staff and have the resources to do the job. I fear now the response time is going to be longer than it was before, not shorter, because of the resources not being there in the ministry.

To conclude, what I want to stress is that this is only part of an overall package of what's being changed in the way in which we make waste management decisions. I see a pattern developing here that alarms me. Let me just quickly summarize it for you. I see us moving away from planning for waste management and instead focusing on a single project, building a landfill, instead of looking at what our waste management scheme is. One of the things that is escalating that happening is the withdrawal of funding from municipalities by the province to do waste management planning. That money will be gone as of March 1997. So that makes us become much more ad hoc and not working together and not looking at overall schemes and plans.

The second thing I see happening is moving away from hearings, in fact I fear dropping hearings, and

setting up, for example, the landfill regulations, which are now under discussion, and the incineration regulations, which have already been approved. It makes me worry that we're creating a situation where we'll be told: "Okay, I came in, I conform with the regulation. Therefore, Minister, say we don't need a hearing because from your bureaucrat's perspective we conformed." That's the direction I see happening there, which I think is a serious mistake.

I'm seeing more discretion coming to the minister and the civil service through this proposed legislation. I'm seeing a weakening public role, with funding gone to help citizens' groups to play a serious role in the job, with hearings either disappearing or being weakened in terms of the fullness of the topics related to the discussion and, with so many topics now being thrown on the Environmental Bill of Rights registry for 30 days to respond on all of these various components which we can't possibly deal with that quickly, a weakening of the public role.

The overall effect that I fear we are going to have from this in terms of waste management decision-making is less predictability, not more, and secondly, more conflict and more confrontation, because as people lose the confidence and the ability to use the environmental assessment planning process to achieve the goals that we all share, they'll then start looking for other avenues to try to deal with it, either trying to block things through the courts if they can afford it or through demonstrations or whatever. I know none of us want to go in that direction. So that's the concern that I want to throw out in front of you: to be aware of what we're really doing to the overall waste management decision-making process here.

1120

Ms Churley: Just on one of the last areas you touched on and that is the terms of reference negotiations going on the registry, it's not clear how that would happen, because right now, the proposed terms of reference for an EA would not fall within the existing categories, so there would have to be an amendment to the Environmental Bill of Rights and its regulations to make that happen — the goodwill could be there — and the fact that it's after the fact is a problem. I found your comment very interesting about, how could you get the public immediately affected involved at the front end of the terms of reference if it's not clear where the site is being proposed, and I'm wondering what suggestion you have to get around that, because I agree with you that the public has to be involved from day one.

Mr Jackson: Yes, and I think this is the problem we confront under the current system too, so I don't want to just raise this as a problem in the proposed system, which a lot of us discussed. I think the reality we've all come to realize is that you try seriously and you will get some people seriously involved at the beginning stages, and those tend to be the people who are already in the community working on environmental issues or working on waste issues. But you have to have enough flexibility in your work and your planning to recognize that inevitably, at a later stage when you do talk about siting of facilities, there are going to be new people who get

involved at that stage, and you have to have the flexibility as a proponent to bring them on at that stage and to be willing to discuss a wide enough range of issues that they're going to be satisfied. We can't avoid it. As I said, we're all so busy, you can't expect someone to come out at that point.

Ms Churley: That's something that we're going to have to look at in terms of amendments.

You talked about the board in some cases will be told that it can't receive evidence in some areas. An example would be an incineration proposal. If at the beginning of the process, looking at alternatives to the undertaking, for instance, is off the table, and I've been told that it would be — maybe this has changed — unless that proponent is also in the actual business of 3Rs, then that proponent would not have to look at alternatives and therefore wouldn't be on the table. So how do you think that would work? If you're looking at setting up a huge incinerator to deal with hundreds of thousands of tonnes of garbage every year and not looking at the competitive side of that, and that is the recycling and reuse, I'm wondering how you see that could work.

Mr Jackson: It's bad news, and that applies not just to private proponents but as well to municipalities, and one of the driving forces that has really helped move along 3Rs in this province has been the fact that you go and talk to a municipality and they realize: "We're going to end up at a hearing. We're going to have to justify why we're putting this much stuff into disposal. That means we have to look at 3Rs seriously and have some programs up and running to show our good faith to the hearing board." It's been a powerful driving force, and I fear that if that's taken off the table, we're going to lose that driving force.

Ms Churley: But presumably they wouldn't even have to prove or show how they're going to deal with taking that recyclable and reusable object out of the waste stream and not have it going into the incinerator?

Mr Jackson: That's the way I interpret the legislation, yes.

Mrs Ecker: Thank you very much, Mr Jackson, for coming today and taking the time. I appreciate that you've been very involved in the previous process under the current legislation, but I have some familiarity with some of the examples that you've mentioned, and I have difficulty thinking that a process is working well when it takes, for example, the OWMC 16 years to come up with a decision that we shouldn't go ahead with this. Halton took, I think, something like 10 years. You've got Kingston that's been 12 years in a process that still has an outstanding decision. You've got Peterborough that's been about 10 years. I guess I'm a little concerned that a process that is taking that long to come up with a decision either to proceed or not to proceed is certainly a difficulty for not only the proponents obviously, but also the citizen groups.

Mr Jackson: Definitely.

Mrs Ecker: Very much so, so I guess what I would be concerned about is, don't you think that we need to take a look at how to improve the process so we're not doing that to the citizens' groups and the communities and everybody else? Because I guess, to be kind of cynical

about it, if you took a large waste management company or something, they could just wait you out for 10 years if they had all these resources.

Is there not a need to make this system a little more streamlined so it works better for everybody? Is there not a need to have a mediation process which allows us to focus in on the key issues, to use the expertise of the groups, such as yourself, to sit down with the proponents and work out those problems? I know that many times they learn things that they didn't know when they started. Where's the balance here? Because I'm concerned that the previous system certainly didn't have that balance.

Mr Jackson: I totally agree and that's why I listed, I think, five or six items that I said are excellent concepts that are in the new legislation. Mediation was in them, the time frames etc. But my concern that I state in those is that we need to change those to make sure that they don't create some additional problems. The concepts are good in those respects, but I don't think they're workable the way in which they're presented. A lot of it is because of the very high level of discretion that's placed in the minister's office or in the office of someone she may delegate it to.

Mrs Ecker: There's a fair bit of discretion there now in the current legislation —

Mr Jackson: There is.

Mrs Ecker: — and I would suggest the flexibility that's been talked about by some of the proponents where you need to be able to respond to what the community groups are doing — if you've got it all wrapped up in red tape, nobody can respond. You're stuck in a process. Even if a community brings forward something that everybody says, "Oh, yeah, fine that's not a problem, let's go ahead," don't you need flexibility to be able to respond to those local community needs?

Mr Jackson: But the catch in the flexibility is that the way in which it's defined now I fear that too much is going to happen behind closed doors in that discretionary process. The flexibility has to happen through community discussion, through the concerned people in the community and the proponent and the ministry as one party at the table sitting around and discussing, "Okay, we're at a stage now we need to do mediation, for example. These are the topics let's put on for mediation, these are the people to be involved," and have that happen through community discussion. I think that's increasingly happening, we're exploring it. And that's excellent. That's why I like the idea of putting into the legislation the concept that reinforces that mediation is good and we should try to do it.

But my fear in the way it's now set up is that too much of the discretion in terms of — it says very specifically, for example, the minister will decide who the parties are at the mediation. The community has to decide that, or else it can never be accepted by the community. It's very much set up as a secretive process in the mediation process. To work, mediation has to be something the community buys into, and I fear it won't this way.

So, as I said, there's a list of concepts there, some which you mentioned, that I fully support the idea, but I fear that the way in which it's defined in this legislation

can create serious new problems for us because it's not open enough.

Mr Gravelle: Thank you, Mr Jackson. That was a really terrific presentation and I think you brought up a lot of interesting areas and some new information too in terms of how the process has worked. Obviously, the point of going to public committee hearings such as this is to basically talk frequently about how one can improve a bill, because there's an agreement there's a need to streamline and you're not disagreeing, and I think a lot of the previous presenters have not been disagreeing as well, but I think this is the opportunity to obviously make some changes which will improve it. I think you have clarified a couple of them in a simple way, and I want to even deal with the whole question of needs and alternatives.

In a way it strikes me as astonishing that would not be automatically there, and I'm trying to figure out, why would it be removed? Why would it not always be there? Is it ultimately simply a cost-saving measure to not have to confirm why there is a need, or is it in terms of having to determine what the alternatives may be? Clearly your point was if you don't deal with what the alternatives are, you're putting us potentially in a position where things could be much worse off in the future. I'm just curious as to your thoughts on that.

Mr Jackson: I think you'd have to ask the proponents, first of all, why they don't like the idea of it being there. I can't think of any good reason for it not being there. It's critical in terms of community planning.

The message I get, if we take out the discussion of need and the discussion of alternatives, is that we're not developing any more, for example, a waste plan in terms of how to deal with waste in our province and in our municipality. Instead all we're doing is focusing on building a disposal facility, and history has shown us that if we focus on building a disposal facility, we do not find the best ways of dealing with our garbage.

1130

Mr Gravelle: Can I, in the short time I have left, talk just a bit about intervenor funding too. Could you assist the committee, because obviously you've got some experience with public consultation. You were defined as being kind of the expert earlier by Mr Huff. There has been some controversy about intervenor funding and how it's used. Could you basically give us a good sense of how it should be interpreted and how that could be interpreted? We'll argue about the need for it, and I would certainly insist that there's a great need for it and it could be better for the project altogether, but could you help us pin down how you would recommend you do fund intervenor funding?

Mr Jackson: I think we need to combine intervenor funding with having what's usually called participant funding at an earlier stage. For example, on the Interim Waste Authority process, because there was participant funding there that allowed the community groups to do some serious assessment before we ever got near a hearing, to say, "Look, these are some fundamental flaws with what's going on here," we then got to the stage of it becoming obvious to everyone that it was silly to go ahead with the hearings, that there were serious problems

here. We saved money at the hearing stage. I think if you have participant funding up front, we need less intervenor funding later because we're going to have scoped the issues.

I know in the Ontario Waste Management Corp we had participant funding. As a result of that, in the hearing stage we didn't discuss the siting issues at all. We said, "We think they did a good job in terms of siting." We have some other serious problems to the effect that they shouldn't have sited this at all, but in terms of siting, which of the eight sites was best, we looked at it earlier — it's relatively cheap to look at it at that stage — and said, "Drop this issue off the table." So when we got to the hearing, we told our lawyers, "Don't cross-examine on it." We didn't put any witnesses up on that issue. It saved a lot of money and time at the hearing.

Mr Gravelle: You're saying it can save money. Okay. Thank you.

The Chair: Mr Jackson, thank you very much for appearing before us this morning. We appreciate your effort and your time.

REGIONAL MUNICIPALITY OF YORK

The Chair: Our final presenters for this morning are the group from the regional municipality of York, if you would come forward, please. Welcome.

Mr Alan Wells: I'm Alan Wells. I'm the chief administrative officer for York region and we're here representing our regional council. With me and participating in the presentation are John Livey, who is our commissioner of planning, and Kees Schipper, who is our commissioner of transportation and works. We hope to bring some practical discussion to this matter because we're involved day to day in administration of this act.

First of all, I'd like to thank you for the opportunity to make this presentation. At York region we are proud of our track record and our involvement with the EA process and we will look forward to the changes, which we'll speak to. As you know, we are very much involved in issues related to transportation and public works at the regional level. Our perspective is from the side of being a proponent on many environmental assessment studies, as well as a governing agency trying to deliver much-needed services in as efficient and effective a way as possible while maintaining due regard for the environment.

I should also like to add before we start off that I had the opportunity of attending a meeting with all the regional chairs of Ontario with Minister Leach recently and I can tell you that the chairs had some discussion on this matter and expressed their general agreement in support of improvements. We discussed our paper at that meeting and they gave their informal support, although you can appreciate, with the time, that resolutions have not formally been made at regional council.

Overall, York is in support of the reforms with respect to how they affect the maintenance and construction of roads, road-related facilities, and water and waste water facilities. Specifically, we are pleased to see little if any necessity to change the class environmental assessment

documents for roads and water and waste water. We believe these processes are now well understood and accepted by the public and as such there is no necessity for change.

The fact that the class EA process will be enshrined within the act itself is supported. With more than 90% of our assessments conducted according to the class process, it is appropriate that they be enshrined in the act.

The third point I'd like to make in a general sense is that we are supportive of the use of "harmonization" within the act. By providing the minister with the authority to declare the requirements of other jurisdictions equivalent to the Ontario EAA, duplication and waste are effectively eliminated. We're very much in support of any steps to reduce duplication and waste.

Some of the members here are familiar with the costs of dealing with issues in Durham and Peel and Halton. In each of those cases the chairs of those areas wish to express the amount of time and costs that were involved in EA processes, particularly related to solid waste sitings.

I'd now like to ask John Livey, who's been involved in working with the government on reviewing legislation, to talk in terms of the coordination of the EA process with other legislation.

Mr John Livey: Procedurally, this act and the Planning Act have yet to be harmonized. There have been a number of attempts in the past. We think this new bill is a much truer bill to the original objectives of the Environmental Assessment Act, namely, to ensure that there's proper environmental assessment, broadly defined, of large-scale environmentally significant projects; ie, Hydro, major waste disposal sites, highways and other public works. It's more clearly designed to assess the environmental impact of a proposal than to be an environmental planning act, which is what the old act grew to be.

Now is an appropriate time to review the interaction between the two acts, the Environmental Assessment Act and the Planning Act, so as to minimize processes related to the task of planning for municipal infrastructure, and parenthetically the provincial infrastructure, for developing communities.

In the case of new secondary plans in York region, there's no need to have two sets of public meetings and procedural requirements on notice and appeals operating at the same time related to conceptual infrastructure planning; the need, the justification and the overall servicing scenarios are ones that are relatively duplicated between the Planning Act and the Environmental Assessment Act on nearly every one of our major secondary plans.

The specific design related to the provision of the infrastructure — the actual design of the roads, the actual design of the pumping stations — could be left to the Environmental Assessment Act, but the preceding overall conceptual infrastructure should be integrated with the Planning Act. Under the current process, a stakeholder often objects to either one of the two acts, such as a proposed infrastructure improvement under the Environmental Assessment Act, but during the planning process the same stakeholder may not have objected to the

development proposal that is creating the need for the infrastructure improvement.

In order to strengthen the community planning process and the assessment of the infrastructure related to it, it would be appropriate to merge the needs and justification aspect and the review of alternative solutions for major infrastructure projects with the regulations under the Planning Act, namely subsection 16(1), which are now in the Planning Act but have yet to be prescribed by regulation. This will ensure continuing consistency with the objectives and standards of environmental assessment, but with the advantage of dealing with the planning aspects of infrastructure under the requirements of the Planning Act.

The same argument can be used for the Expropriations Act. Within this act it is necessary to have meetings which allow the public the opportunity to address concerns with respect to expropriations. Under current legislation this cannot occur until the EA work is complete. A more favourable process would be to allow the EA act to show required expropriations should the proposed solution of the EA be accepted. By allowing the amalgamation of the public notification and information processes under the two acts, a great deal of time and resources can be saved.

I'll turn it over to Kees Schipper, our commissioner of transportation and works.

1140

Mr Kees Schipper: We at the region of York have a real interest in the waste management aspects of this proposed legislation, as approximately 35% of the solid waste that is disposed of in Ontario is disposed of in York region at Metropolitan Toronto's Keele Valley landfill site. York region does not want the Keele Valley site expanded, nor does York region want to continue to receive Metro Toronto's waste beyond the closure of the Keele Valley site.

As you are well aware, under the Interim Waste Authority process, York region was destined to continue to receive waste from Metropolitan Toronto. York was extremely pleased with the government's decision to terminate the IWA process. York also supports the government's decision to allow waste incineration with energy recovery as an acceptable waste management alternative. York is vitally interested in ensuring the existence of an approvals process that is going to streamline the approval of additional waste disposal capacity in Ontario.

The following are our comments with respect to solid waste management.

Firstly, the concept of terms of reference: We support this concept. The minister's approval of the terms of reference will ensure that the issues of need and alternatives will be fully understood by all parties early in the process. It is our understanding that the regulations will ensure that the board is also bound by the minister's decision on the terms of reference.

Secondly, proposed environmental assessment approval time lines: The proposed approach is certainly a step in the right direction. However, two concerns must be noted. It has been the practice in the past for proponents to submit draft EA documents for initial review by ministry

staff. We expect this practice to continue. Should this be the case, time lines suggested in the proposed legislation for EA documents should also apply to draft documents. Secondly, there appears to be no penalty associated with the time lines not being met. We therefore question the effectiveness of this approach.

In regard to mediation, we support the concept of mediation. However, we'd like to make three points. Firstly, issues resolved by mediation must not be referred back to the board. Secondly, a board member, if he or she is involved in the mediation of an issue, should not be able to return back to the hearing as a board member. Finally, the content of the mediator's report referring to unresolved issues should be held without prejudice and kept confidential.

According to the proposed legislation, when the minister refers an application to the board, the minister must be able to direct the board to hear testimony in respect only of the matters specified by the minister. Subsection 9(4) gives us some concern in that it appears to contradict the previous section in the proposed legislation.

With regard to property acquisition, the ability to acquire property or rights in property before a proponent receives approval to proceed with an undertaking is a positive change.

The last comment we'd like to make deals with the willing host concept. The definition of "willing host" must be given, presumably in the forms of regulations and guidelines. The ability to define "willing host" as part of the terms of reference for an environmental assessment does not go far enough in resolving this issue. It is felt that the concept of a willing host for a solid waste management facility should be further investigated. Although there may be difficulties in defining the willing host concept, it appears that the environmental assessment approval process could be significantly reduced with this scenario. Further work in this regard should be carried out.

Mr Wells: In conclusion, York will continue to be very proactive in providing environmental initiatives with respect to the services we provide to the public. Our dealings with the water and road class EAs are now well understood by the public, and as such it has become an effective and streamlined process. We are pleased with the efforts to streamline the EA process further but we believe further progress can be made by even further combining with other acts, in particular the Planning Act. It's through that act that the public has the basic identification with local government.

The solid waste management concerns are significant to the region of York, and indeed to all the regions in Ontario. We hope you will find benefit in our suggestions. Again, we're here to make our brief presentation and to maybe serve as a sounding board to the committee if you have any questions.

Mr Pettit: Thank you, gentlemen. John, I believe it was you who early on in your presentation mentioned the harmonization of the EA act and the Planning Act and then you said now is an appropriate time to review the interaction between the two acts. Can you tell the committee of any obstacles or impediments that you see relative to the integration of those two acts?

Mr Livey: Currently the requirements of the class EA would still have to be formally carried out and approved under that act. Similarly, the Planning Act still requires a community plan to go through a planning process that's authorized under the Planning Act. The Planning Act has subsection 16(1), as I mentioned, yet to be prescribed, but until the Environmental Assessment Act authorizes an approval to take place under the Planning Act in conformance with class EA requirements, you're still going to have two acts operating and two potential avenues of challenge. The suggestion would be to make some approval up to the needs justification and alternative side underneath the Planning Act by ensuring that MOEE, for example, is able to comment on that aspect into the Planning Act process and allow one approval to take place.

Mr Galt: Just a point of clarification on your concern about having two public meetings for the two acts: Both acts do require that you have a public meeting, but there's nothing in either act that says they can't be together, and we would encourage a common meeting at the same time rather than having them separated out and creating more concern.

The question I'd like to pose to you — you made reference to mediation and the release of that report; I gather you're suggesting it be kept in confidence because it might prejudice the board's decision or what happens with the board — would you be comfortable if that was released once everything was completed, that it was available to the public down the road?

Mr Schipper: Yes. I think our main concern is that any discussions throughout the mediation process should be held in confidence and should be without prejudice. Once the entire issue has been resolved by the board and final approvals have been given, I don't think there's, from our perspective, any danger or any shortcomings of that information being released.

Mrs Julia Munro (Durham-York): Thank you very much for giving the presentation today. I have one question that hasn't come out certainly in the act itself. Could you comment for me: As we see more and more the development of public-private partnerships taking place, do you see this process being inhibited or in any way made more difficult or enhanced through this proposed legislation?

Mr Schipper: I would say there is nothing inherent in the proposed legislation that would work for or against the private or public sector being a proponent for a waste management facility. In both cases there are certain additions to the act that we applaud and there are some further suggestions, but I don't think there's anything inherent about public sector participation that would be frustrated by this legislation.

Mr Wells: If I may, as a supplementary: While we're investigating and exploring a public-private partnership on our long-term water supply, we've been conscious of the EA process, and right from the beginning all steps we're taking are to harmonize with potential hearings in the future.

Mr Gravelle: Thank you very much, gentlemen, for your presentation. I just want to discuss with you again the concept of public consultation which has been coming

up frequently and what your feelings are about it. Obviously you're dealing with the municipality of York. It's an important element in terms of how this bill affects things. I just want to get a sense of the value of public consultation and how you think it should be dealt with.

Mr Livey: The best suggestion I have for you is to try and distinguish between the broad and conceptual issues and the detailed, site-specific issues. We heard that from the last speaker and about people being very concerned about something being physically located beside their house and property. It's quite understandable that you'd want to give them some opportunity to have input into the process.

1150

I go back to the harmonization of the Planning Act and the EA act. The Planning Act and the official plan side, broad conceptual issues are dealt with in a fairly straightforward process and the zoning bylaw and site plan issues are often the ones that are site-specific in nature. If there is some harmonization between the two acts, you have the opportunity of dealing with both those issues through an established process that the community knows well and understands.

The issues in the Environmental Assessment Act as proposed of scoping, of terms of reference and access to that thing may have to have a similar kind of two-stage approach, of broad conceptual issues on individual liaison versus the more detail of site-specific considerations and type of notice that you would give on those site-specific considerations when they come up, when they're identified.

Mr Gravelle: Are you saying — perhaps I misunderstood you — that you think, obviously in terms of site-specific, there should be consultation but it's not as important in the broad conceptual sense?

Mr Livey: No, I think you give that opportunity in both cases. I agree with the last speaker that it's unlikely that you'll get everybody to understand how it really impacts them until later. You give them the opportunity, but they don't often have in their busy lives the time or inclination to come out. But then you pay attention to the site-specific questions and you pay attention to site-specific concerns of individuals by providing notice.

Mr Gravelle: Do you think it's important to define in the early stage, in the terms of reference stage, for example — I think the way it's phrased at this stage is, "The proponent shall consult about the undertaking with such persons as may be interested." Is it important or valuable to clarify or pin that down rather than "as may be interested," which is an odd term in its own way because one can argue that a lot of people would be very interested?

Mr Livey: I think it's a bit of a catch-22, because you don't know at the beginning exactly what the preferred alternative may be. Where you think the preferred alternative is going down a very specific road, leading to a very specific undertaking, I guess you could design it that way. But the flexibility inherent in these terms of reference is that you could identify that when a site is selected there will be adequate consideration to giving further notice to applicants to make submissions.

Ms Churley: Thank you for coming today to give us your views on the bill. I want to come back to your comments about mediation. There are a number of issues and that's one we're hearing different points of views on: how public the process should be and whether it should be done in secret or very openly and then the reports made public. Certainly that's a valid criticism for having it held in secret and the results not given to the public, because as you know, in these very often volatile, demanding, complicated processes citizens' groups and others can get very upset if they think that things are being done in secret and that they don't have access to the information.

I'd like to ask you, understanding your reasons why you said you'd prefer it to be that way, how you propose, if that's the case, to deal with all these people who are not happy about being left out of that very important process and then not having access to what happened in that room. I think that would be a major, if nothing else, political problem. Do you have any comments on that?

Mr Livey: My comment would be that by its nature the mediation process will involve the exploration of potential solutions. There may be many things suggested that may be pursued or not pursued, and each party will feel free to negotiate as it sees fit. In the end, if a matter is successfully concluded through the mediation process, whatever has led to that successful conclusion has been based on discussions without prejudice. I would suggest that the final resolution taken to its final approval by the board and by the minister, any comments made in achieving that mutual solution, should be held in confidence and without prejudice. As I said earlier in response to a question, our main concern is that those discussions be held in private during the approvals process. I would suggest that after the approvals process is completed, at that time it's a different issue.

Ms Churley: Who do you see would be involved then in the mediation process?

Mr Wells: We would see all the parties involved and we would see in a mediation process that if there's a group, there would be a representative group. We understand the sensitivity of having a public process in hearings, but really the mediation is an interim step in trying to resolve a number of outstanding items. Kees is suggesting that it be confidential during that process to give the parties some scope to put various items on the table without prejudice. Clearly, once the mediation is completed and there's a report back, they would have to be very public and accountable. John, who's involved from the planning perspective, may want to add some comments as well.

Mr Livey: It's very difficult in legislation to promote good practice in mediation. I don't think you'll find a practical way of doing that in legislation. In many cases you find that mediations held in fully public forums lack the creativity because the participants are unwilling to offer some blue-sky ideas. Some practical ways of dealing with this are to have the mediator report on a regular basis back to the public and give some statements of progress without revealing the actual deliberations or potential options that were discussed, publishing the report afterwards so that people see it was a credible and

practical way of dealing with some of the issues. I think that's what you have to do in terms of good practice, and much of it depends on the circumstances at hand.

Obviously you want to have the adequate, the right number of parties at the table; you want to have a representation of a broad variety of issues. You don't want to leave something off the table by not having somebody there to represent it who later will come back to become a problem. Designing who is going to be there, designing some feedback on progress and making the report available later I think are three key, good-practice elements that you would employ as a mediator in the process without legislating that.

Ms Churley: I know it is a difficult area. I guess you would agree with me that the essence of successful mediation is that all parties with a stake in the issue are there voluntarily —

Mr Livey: Yes. It's inclusive.

Ms Churley: — that you can't coerce a party which has great philosophical differences to come to the table. I presume you'd agree that the mediator should be someone whom all parties are comfortable with, that it should not be the minister's choice but all parties should agree so that there's no trouble with one party —

Mr Livey: Or be neutral.

Ms Churley: — and that everybody has got to agree to sitting down to take part in the process, that they can't be forced to mediate.

Mr Livey: That's correct.

Mr Wells: The parties must have confidence in the mediator.

Mr Livey: At the end of the day you have a process in place for arbitration if the mediation is unsuccessful, and you know that's there to fall back to if you can't make best efforts to get successful mediation.

The Chair: Thank you, gentlemen, for joining us today. We appreciate the effort and your appearance here before the committee.

These were the witnesses for this morning.

Mr Gravelle: I'd like to make a formal request first, if I may, to the research officer, Mr Glenn, in relation to the information that was given to us this morning by Mr Huff from the Sierra Club related to the meeting he attended, I think he mentioned June 6 or 7, with the Ministry of Natural Resources and with Mr Vrancart, at which time the statement was made in relation to the exemption of MNR from the class environmental process. I wonder whether there might be minutes available from that meeting, because clearly it was a meeting of a variety of groups — it would be useful if we were able to receive those — and also to find out whether or not any formal or informal request has been put in to the Ministry of Environment and Energy.

I would like to ask Dr Galt, if I could, whether he has any information he could provide to us in light of this. Clearly it's got reasonably dramatic implications if that's the case, particularly if it's got to do with a lack of staffing, so if he can provide the committee with any further information, that would be very helpful.

Mr Galt: I'd be more than pleased to look into that. I am not aware that it has been submitted to our ministry, but the way we've been handling questions so far with

this committee is that if you would put it in writing, then we're clear on the request and we'll try to have an answer for you tomorrow.

The question from last Thursday, I just picked it up this morning, to Ms Churley. We don't have an answer today but certainly will have tomorrow, if that's in order with you. If you don't mind, it doesn't have to be typed up or anything; just scratch it out on a piece of paper so it's clear. I'll get it turned in and we'll try to have that for you tomorrow morning.

Mr Gravelle: That would be great.

The Chair: Very good. Thank you. Any other business? We resume at 1:30 sharp, please.

The committee recessed from 1200 to 1331.

REGIONAL PLANNING COMMISSIONERS OF ONTARIO

The Chair: Ladies and gentlemen, our witness is from the Regional Planning Commissioners of Ontario organization, Mr Rash Mohammed, vice-chairman. Welcome to the hearings.

Mr Rash Mohammed: Thank you very much for having us here. My name is Rash Mohammed and I'm the vice-chairman of the Regional Planning Commissioners of Ontario.

We are a group of professionals, planning officers of all the regions, including the restructured county of Oxford as well as the district municipality of Muskoka, and together we deal with the population in these areas, about 6% or 7% of the population of Ontario — at least, that's my estimate — in 1996.

First of all, I'd like to tell you that our submission is one based on consensus of the regional planning commissioners. It is not the position of the regional corporations. I'm sure some of these corporations will be making presentations to you in their own regard. Indeed, we want to say that our submission has not been approved or reviewed by our councils. We are a bunch of professional practitioners in the field and we're here to offer some assistance to this committee. Incidentally, I'm from the region of Halton.

In our paper, which I assume you have got before you now, what we've done is attempt to examine each of the major points the province promoted in its background materials on the bill, and we emphasize our comments on the proposed changes to the class EA. There are 16 recommendations we've made, and they're listed on pages 12 to 14, specific recommended actions we're presenting. In addition, there are a number of administrative matters that I won't be talking about, listed on pages 15 and 16, that I will just leave with the committee.

We were under the understanding that the province was working on reform of the EA process pertaining to waste management. The regional planning commissioners, of our own volition, decided that we would work on looking at the whole matter of the environmental assessment process, and actually we started that over a year and a half ago. In that process, we established some objectives for any new approach to an integrated Planning Act and Environmental Assessment Act. I'd like to outline to

you some of these objectives we set that any reform to the legislation must meet. These objectives are as follows:

- Achieve efficiency, affordability and cost-cutting measures by scoping the need for projects.

- Evaluation of reasonable alternatives for each situation, reflecting specific municipal contexts.

- Allow clear decision-making through complete documentation which is understandable to all participants.

- Continue public accountability through municipal council process and decision-making.

- Obtain closure at key decision points through a process that is goal-driven.

- Provide public notice and/or involvement at a scale commensurate with the project.

- Provide means of appeal and alternative dispute resolution, where appropriate, to mediate disputes.

Overall, we are quite pleased to see that the proposed new legislation goes a long way to meeting most of these objectives.

Fundamentally, ideally, we believe that the Planning Act and Environmental Assessment Act should be merged so there is one process for planning and impact assessment for infrastructure projects resulting from land use planning decisions. That's the conclusion we've come to. It's been 20 years since the act was initiated, and I should tell you that since about the mid-1970s our profession, applicable legislation and procedural tools outside of the Environmental Assessment Act have become increasingly sophisticated and more environmentally responsible.

Since 1981, the Environmental Assessment Act has been applied to a wide range of infrastructure projects carried out by municipalities. These projects were also subject to public review and related land use approvals under the Planning Act. As a result, municipalities are increasingly hampered by two planning processes under two pieces of legislation for which two different reports and two sets of public meetings and potential hearings are required. This inevitably leads to duplication, delay, extra costs and confusion.

We believe the time to eliminate the duplication and costliness of the two processes is during the review of the legislation that you're doing now. Therefore, we're requesting that the government provide specific means for municipalities to meet the requirements for both the Planning Act and the Environmental Assessment Act. We're convinced that a precise link between both pieces of legislation is necessary and possible.

Therefore, first of all, what we would like to suggest to you is that a reference to the Planning Act be included in sections 6 and 13.1 dealing with the contents of the terms of reference. This would ensure the proponents may specifically access this related legislation in preparation of an individual or class environmental assessment.

Therefore, we're suggesting that you add to subsections 6(2) and 13.1(2) as follows:

"(d) indicate that the environmental assessment will be prepared in accordance with such requirements as may be prescribed in 16.1 of the Planning Act."

In essence, what we're saying is that what's already in the Planning Act we'd like cross-referenced in this piece of legislation.

As municipal proponents, we welcome a fuller and clearer description of the class environmental assessment process in Bill 76. However, we are concerned that there is a lack of reference as to purpose, rationale and consideration of alternatives in subsection 14(2), which describes the proposed contents of the class EA. Therefore, what we're suggesting is that you can add to subsection 14(2) some words like "a description of the purpose and rationale for the class undertakings" and "a description of the alternatives to the undertakings within the class."

Also in section 14, there are two words there which give us some difficulty. We are opposed to those words, which read, under paragraph 8, "A description of the method to be used to determine the final design of a proposed undertaking...." We suggest that "final design" has a distinct meaning within the municipal context which is outside of the scope of the environmental assessment process and we believe that better words might be "means to implement." What we're suggesting is to remove "final design" and add the words "means to implement."

1340

The dilemma the ministry finds itself in is similar to that of a proponent: How much flexibility and how much certainty should be provided to participants and stakeholders? We agree with the ministry's attempt to provide early direction through the introduction of the terms of reference prior to the preparation of an EA. Unfortunately, that approach assumes that all participants can accurately predict the issues and points of contention before they occur. For example, to suggest that the terms of reference would be approved "if the minister is satisfied that an environmental assessment prepared in accordance with them will be consistent with the purpose of this act and with the public interest" is at best hopeful. If the parties could understand and agree on "the public interest," then we would hardly need mediation or board hearings.

We applaud the opportunity for real scoping of all decisions through the use of the terms of reference. We recommend that this could be better accomplished by stating more clearly in the legislation the purpose of the act. An additional purpose, added to section 2, would assist in the focusing of issues and the preparation of the terms of reference and environmental assessments. This purpose would be consistent with the federal environmental assessment framework and the principles of environmental assessment found in subsection 6.2(2) of Bill 76. Our suggested wording would be "to plan undertakings in order to prevent, mitigate or remedy significant adverse environmental effects, including cumulative effects and effects upon future generations."

The minister, in making her decision, must have regard to a number of matters specified in subsection 10(2). Similarly, the board in subsection 9(6), as a key decision-maker, should be directed in its decisions by the purpose of the act. Revised wording, including this reference, should also be included in subsection 9(6).

The effect of the introduction of the terms of reference and their approval is that the real decisions will be made early in the process. However, these terms of reference are not binding on all parties to the process, only the

proponent. To ensure the terms of reference have the effect of focusing the process, all parties, including the agencies, minister, director, mediator and public, should be required to consider the approved terms of reference in providing comments and identifying issues in the process. Therefore, we're recommending changes to section 2 which would add a suggested purpose and we're suggesting revision to subsections 6.5(2) and 7.2(2) to add reference to the "approved terms of reference."

Finally, we are recommending that the board or the minister would equally make decisions based on these documents.

On the issue of guaranteed public consultation, we believe that the terms of reference could be used to delimit the public consultation, which could have the benefit of shortening the process. Unfortunately, the bill, as worded, only provides for consultation on the undertaking, not on the alternatives or the environmental effects and so on. We believe that section 6.1 should be revised to address this matter.

The role of the public in mediation is ambiguous. The minister "may" identify and "may" dictate the manner in which the parties are to be identified prior to the mediation and not the actual parties. The mediation is not open to the public unless the mediators decide to open the proceedings. These provisions could lead to significant delays as interested but excluded persons seek leave to participate.

Therefore, we're suggesting that section 6.1 be revised to ensure consultation "during the preparation of the EA" and not merely the "undertaking."

We believe that in section 8 there should be a clarification as to "who" may be considered parties to a mediation and that the minister "shall" identify them.

Under the issue of timely decisions, certain key decisions are subject to restrictive time lines that may be difficult to meet. Experience with the Planning Act application process has shown us that for time lines there should be an amendment procedure and clear implications for missing the time lines. We suggest that if the minister fails to decide within a certain time frame, where no extensions are provided, then the minister forfeits the opportunity to dispose of the application and it is automatically approved. This could be accomplished by deleting subsection 10(4). We note that the minister would retain rights under subsection 11.3(3) to amend a decision subject to prescribed rules.

In subsection 7(4) there is a time line for a proponent to have seven days to respond to and correct deficiencies in an EA. This may have the effect of weeding out the really bad environmental assessments early in the process, but it does little to assist a less experienced proponent trying to meet the requirement set out in the approved terms of reference. We recommend that subsections 7(4) and (5) be amended to eliminate this provision altogether, as this short time frame would not be a useful addition to the process where an EA is clearly deficient. Instead, either a refusal with reasons should be provided by the minister or, alternatively, conditions for the proponents should be given that would have these sectors correcting the deficiency.

We believe that the focusing of board hearings and the scoping of board hearings through the directions provided by the minister is an excellent addition to the legislation. Subsection 9(6) should be amended, as noted above, to strengthen this provision such that the board should be consistent with the minister's direction and with the approved terms of reference and, in an effort to keep the hearings scoped, should not be able to add indefinitely to the list of documents and matters under consideration.

Subsection 27(1) provides for the minister to develop policies to guide the board. This section should be broadened to include others who may be guided by these policies — the proponent, the ministry staff, the minister, mediators, and so forth.

Under the issue of mediation, we are pleased to note the addition of means to mediate disputes in the EA practice. Often, the key to a well-planned project is the ability of the proponent or the approval authority to resolve specific issues through a mediated approach. The addition of section 8 provides for such resolution. However, consistent reference should be made to the mediation process through the new legislation; for example, in subsection 30(1.1), where the ministry record is created. Revisions should also be made to indicate how and for what purposes a mediation may proceed and/or be used.

The value of the mediation process is severely constrained if the resulting outcome is not used in the focusing of matters affecting a decision by the board or the minister. For example, section 65 of the Planning Act states that the minister or the board or the council of a municipality shall, "if they consider it appropriate, at any time before a decision is made under this act, use mediation, conciliation or other dispute resolution techniques to attempt to resolve concerns or disputes in respect of any planning application or matter." We say this from experience, because virtually every day of our practising life we do mediation, so we've got an extensive amount of experience in this process. We believe that the existing wording in Bill 26 should be replaced.

It is positive to note that there is a 60-day response for mediators. That's very good, but to add real value to the process, major, contentious issues should be permitted to have a longer time frame in mediation, if required. Therefore, we recommend the minister specify the time frame for mediation. The minister can use the 60 days as a guide. A time frame should be developed in consultation with the mediators, proponents or other parties.

Under minister's orders, we note that there are six major types of orders. We like replacing the so-called "exemption" orders and "bump-up" decisions with minister's orders. We believe it will add much-needed flexibility to the EA approval process. It remains unclear to us how section 16 of the new legislation is triggered in the context of existing class EAs. At what specific points would the minister receive a request for a minister's order under subsection 16(1)? It would appear that a proponent of a class EA, for example, pursuant to 16(3) would be required to provide notice to the public and that an objector could request a minister's order. However, given the wording of 16(1) and 16(3), the minister could determine that an order may be appropriate at any time, not merely following the formal notice of completion in

the class environmental assessments. Clarification must be made and class EAs will need to be amended to address this issue.

Under the issue of harmonization and consolidation, the proposal to harmonize this act's provisions with other jurisdictions is quite welcome. A minister's order may be triggered when the minister determines that requirements imposed by another jurisdiction are "equivalent to the requirements imposed under this act" where the minister declares that this act does not apply to an undertaking or where only certain provisions of this act will be applied. It is presumed that these types of orders would result in a request from a proponent, and this must be made clearer. The basis upon which the minister may make the decision should also be specified.

We recommend that the minister should be guided by the purpose of the act, by section 6(2) of the act — that is, preparing the approved terms of reference — and by the public interest. We are recommending that the minister be guided, in making an order on harmonization, by the purpose of the act, section 6(2) of the act concerning terms of reference, and the public interest.

The last two pages of administrative regulations I won't deal with. I want to thank you for the opportunity to be here.

1350

Mr Gravelle: Good afternoon, Mr Mohammed. You've certainly put a lot of effort into this and there are obviously many amendments that you'd like to make, and I'm sure that we'll all be looking at them carefully.

You mentioned that it's not been reviewed or approved by the respective councils. I presume that's a time issue?

Mr Mohammed: It is a time issue. We were working on this issue, so therefore we were able to prepare this discussion paper rather quickly. We didn't have the time to go to councils. Especially in summertime, councils close shop.

Mr Gravelle: But you have confidence, I would think, that most of what you're saying or a large bulk of it reflects the views of many municipalities?

Mr Mohammed: I sit on the board of directors of AMO and I've seen the submission of AMO. We believe you'll find some reasonable consistency between what we're saying and what AMO is saying. We deal with practical applications; AMO is dealing with governance issues. I know for sure in terms of my council, that I've been before since the mid-1980s on this issue, they're well aware of this issue.

Mr Gravelle: Your reference to the terms of reference and how they basically need to be expanded has certainly been an issue that has come up frequently in front of this committee, the fact that the consultation really needs to be expanded. I'd like to get your thoughts on what the reasons are for that. Certainly we know why we think that is the case in terms of more consultation and a wider consultation being needed. Obviously you agree because you're talking about providing consultation on the undertaking and the fact that it's not done in the alternatives and everything else. So you feel strongly about the fact that there's a wider consultation needed, and more formally so.

Mr Mohammed: Yes, I believe a wider consultation is needed. However, I want to tell you that in any of the consultation processes, closure has to take place. So if all the parties agreed upon the terms of reference — the consultation, the ministry, the minister, the public — closure has to take place, and from there we can move on.

I've had the experience of doing what I consider the most horrible environmental assessment, other than Dr Chant's, of course, which is the one for landfill in Halton. It was a very difficult process. I believe that this process with agreed-upon terms of reference will go a long way, and I want to commend the ministry for proposing it.

Mr Gravelle: You make a quick reference also to the minister's level of power in terms of this new legislation, and I must admit to some degree it seems a bit ambiguous whether or not you think it's a good or a bad thing, because in some areas clearly you think the minister should not have the power he or she will have. At least that's how I'm reading it. I appreciate I'm just reading it now, but there does seem to be almost a mixed message that you're putting across here.

Mr Mohammed: I hope I'm not giving you a mixed message. I believe in ministerial discretion. The political process needs that. However, I do think there are certain things that we mention in our paper that we need clarification on. For example, I mentioned minister's orders. We need clarification on how that's to be triggered, because we're looking to a clearer and discernible process that everybody can understand.

In one area of our position paper we said that the minister should also be subject in his decision-making regime, time regime, to put up or shut up. So we're saying, look, make a decision. You can amend it or you can add conditions and so forth. If you're not going to do that, then let's get on —

Mr Gravelle: If you miss your own deadline.

Mr Mohammed: Yes.

Mr Gravelle: I trust that's a significant part.

Ms Churley: It's a very thoughtful document, quite technical in places, but it's clear that you did a very thorough job of examining the bill. I think you've pointed out some key areas that need amendments and revisions. I like your definition, "To plan undertakings in order to prevent, mitigate or remedy significant adverse environmental effects, including cumulative effects," because that's one of my concerns under the class EA act, that these be taken into consideration.

It's my understanding that you're saying there are some problems with the lack of definition about class EAs and with the fact that — and tell me if I'm wrong in this — alternatives or reasons for the undertaking do not have to be looked at.

Mr Mohammed: I think that's what we're saying. Let me make it clearer. Class EAs were introduced because the EA process was complex. A good example are sewer works. So groups of things like that could be done together. What we're saying here is that no public infrastructure project should be done without knowing its purpose. What we're saying is that you should have a very clear purpose and rationale and it should be put in and re-emphasized on the class EAs too, as you would do

in an individual EA. We're suggesting equally, like on an individual EA, you've got to look at alternatives. We want to make it very clear that class EAs should equally state a purpose and rationale and should equally look at alternatives.

Ms Churley: Are you aware that under the act now, even with a full EA, the terms of reference can be scoped and negotiated in such a way that alternatives to the undertaking, and in fact need, will not necessarily have to be looked at, that it's up to the discretion and however the negotiations come out? Were you aware of that?

Mr Mohammed: I'm aware of it. In all my years I've had very limited scoping; I wish I could have had more. For example, I know for Halton we're doing some major master planning that needs some closure and needs some scoping. It's getting too expensive and too long-winded for providing public municipal infrastructure.

Mr Stewart: Your thought about having the wording understandable is a great thought, because I think half of these acts, most of the public, including myself, can never interpret them. So it's a great suggestion. That's not my question, though.

When you're suggesting that we don't have restrictive time lines, if we do have time lines which tend to move the process on, and certainly I believe Carleton region was looking for a landfill back a few years ago — have they ever got it approved yet?

Mr Mohammed: Who?

Mr Stewart: Carleton region. Have they got it approved now?

Mr Mohammed: Actually, we got one of the few landfill approvals under the Environmental Assessment Act, yes.

Mr Stewart: Yes, and it was some six or eight years, was it not, or longer?

Mr Mohammed: Oh, yes.

Mr Stewart: Okay. I'm leading up to the point that time lines are not necessarily all that bad. I guess my question to you is, if the time frames stay in place, which I believe you should have, do you feel that some type of appeal mechanism would satisfy your concerns, so that if somebody did have a problem to get prepared within the seven days or whatever it may, they could appeal it to try and make a variation so they would have a little bit more time, but still leave time frames in that people have to try and adhere to?

Mr Mohammed: Personally, and I know that I can speak on behalf of my peer group, in fact we like time lines. So we're not suggesting there should be no time lines.

Under the seven-day issue, we think that's unworkable, so we're suggesting delete that. On the other issue I mentioned, there is, for example, a 60-day time line on the response from the mediators. That might be fine for most environmental assessments, but if you have a complex issue like an incinerator hearing, for example, an EFW hearing, or a decision on a landfill, depending on the complexity of the issues, what we're suggesting is, let the ministry sit with the mediators, the proponents and all the parties and work out, using the 60-day guideline, what is reasonable and have everybody hold to it. But to impose a 60-day alone, I foresee some difficulty on

complex issues. For most small stuff it may not matter, but on complex issues it could.

It takes a long time to mediate. I've done it all my life, and we do this every day of our lives. I'm telling you it takes a long time to mediate and we need to hear from those who are participating in the process on how long it will take.

The Chair: Mr Mohammed, thank you kindly for joining us, for the preparation you've put into this and for appearing before us. We appreciate it.

1400

SAFE SEWAGE COMMITTEE

The Chair: Our next witness is from the Safe Sewage Committee, Karey Shinn. Welcome this afternoon. Thank you for coming.

Ms Karey Shinn: My name is Karey Shinn. We represent a large number of residents' associations, organizations and individuals. Debra couldn't get a slot to speak, so I intend to share my time with her as one of our member groups.

The Chair: That's fine. Would you identify yourself please for the purpose of Hansard.

Ms Debra Kyles: My name is Debra Kyles.

The Chair: You have, in combination, a total of 30 minutes. Whatever time you do not use permits us to divide the time between the three parties to pose questions to you. You may begin whenever you like.

Ms Shinn: We'll try to keep our time down.

Who understands the act — only lawyers? — and are proponents accountable? Some effort will be needed by the Ontario government to spell out what the Environmental Assessment Act means to local politicians who at the end of the day end up as the unwitting proponents of projects they have not got the time to understand the finances of, let alone new technologies or workings of the EA act.

I've included a book here of an enormous amount of resources available to people that I don't think people even are aware of.

Safe Sewage went to Metro council begging for mediation in the full environmental assessment of the Ashbridges Bay sewage treatment plant and were told categorically by the chair of the then Metro works committee that Metro was committed to a hearing. I might add that these councillors even claimed to be familiar with the current act but didn't know there are provisions to mediate even now. We would have appreciated that two years ago.

Key improvements to the EA act should include:

(1) Clear criteria to state what triggers an EA. What is the process or protocol that the proponent must follow and therefore the public can see has been followed? And what mechanism or process is in place for the public to initiate an EA?

(2) What set of policies and regulations will the minister or appointed director be using as guidelines for exemptions? This should be clear for all classes: municipal, public-private, private companies and municipal service providers.

(3) In the class assessment process, openings must be created for emerging and new technologies, including Ontario-based environmental industries, to review proposals with the opportunity to better improve the environment and also create new jobs.

Note: Currently when a business signs up in Metro for an industrial surcharge agreement under the sewer use bylaw, they are just told how much they are to pay Metro. There is no provision for these industries to find local companies and technologies that might be very cost-effective at offsetting the need to even have excess strength discharge into the costly public sewer.

(4) In the case that a full individual environmental assessment is required under the provisions of the new act or mediation is requested by the minister or director, funding is necessary, including third parties, to hire independent technical help or legal representation at the hearing or mediation talks.

Note: With the advent of public-private partnerships for water and sewage, for example, certain issues such as accounting practices and profits versus environmental improvements in the public interest may become contentious. A small local municipality could be a third party at a hearing and be considerably disadvantaged by the sheer scale of some projects and the financial strength of the proponent they are up against.

I'm going to give you an example. This is just one that I know is around. The problem: the York region water supply. One of the problems I will use as an example is the project to bring water to one million additional people in York region.

Water comes from Georgian Bay: If the water may come in a pipeline from Georgian Bay, it will likely be a consortium of two international companies under some sort of agreement with York region, however that is worked out and who is accountable to the public. So far there is no EA, not even a class EA, and the so-called alternatives remain limited to the three or four proposals that arrived as a response to a request for qualifications from York region.

Georgian Bay water becomes sewage in Lake Ontario: Now, although the project is advertised as water supply, in reality up to 80% of this cannot avoid becoming sewage as it is used. So the water supply for one million additional people in York region will become the impending sewage filling up the already near-capacity sewer trunks of the York-Durham sewer system. This will discharge effluent in Pickering-Ajax, sewer overflow all along the Metro Toronto waterfront, if they get their permission to open the bulkheads at the north end of Metro, and then create 20,000 additional dry tonnes of incineration in the Duffin Creek sewage incinerator, 10,000 tonnes going to landfill and the other 10,000 dry tonnes becoming either airborne toxic particulate or greenhouse gases. These impacts are avoidable with better direction. We'd like to see it.

Sewage discharges into Lake Ontario are close to the drinking water intakes: All sewage treatment plant discharge pipes on the Lake Ontario waterfront are often within two kilometres of the neighbouring water intake pipes for drinking supply for most of the population of Ontario. Tritium in the Harris filtration plant on the

border of Scarborough and the city of Toronto is testament to the westerly flow of discharges from the Pickering nuclear generator. Other intake pipes are more affected than that one.

How will this new EA act resolve these problems? What is the process? Why didn't the request for qualifications address the sewage or other related flooding issues or the pressure for urban sprawl it will cause?

How will the alternatives be assessed? The public on the waterfront and in small communities along these pipelines and trunk sewers are third parties in this huge project, yet without some kind of funded effort, who will ensure that all the alternatives are seriously considered, such as:

(1) Groundwater recharge to manage stormwater from development through deep-root or living machines or constructed wetlands.

(2) Infiltration basins to eliminate the need for outfall on Lake Ontario at all. A single system in Moose Jaw has continued to service up to 34,000 people since the late 1950s.

(3) Water reclamation and reuse facilities in the region can keep water close to its source. This should be part of any water supply proposal. Some 25% of residential water needs are met in some jurisdictions this way for swimming and irrigation, especially in peak summer months.

(4) Non-structural stormwater management: Even a 50-50 out-of-pipe stormwater management, 50 in and 50 out, costs 75% less than an all-in-pipe solution. All we've seen is all-in-pipe. That's the most expensive.

If the current Ministry of Environment is sincere about public access, early and clear direction and harmonization, we request that the act be clearly written in such a way that the public — and I include here local elected politicians — be informed of their rights and due process before we find ourselves on the receiving end of a misrepresented project, such as this York region water supply.

York region has requested to open the bulkheads into the Metro trunk system. We can only assume they don't know Metro is already overflowing all along the waterfront, especially when it rains. The MOE should know this. They have just exempted the western beaches storage tunnel to resolve one small part of the shoreline, at a cost of \$60 million. Where is the environmental assessment in York region? We have a very productive EA going on in Metro, and we want to know what process the public can have access to in York region for early and clear direction.

If no EA is initiated, what then? If resolution of these impacts are not resolved in an EA, will the public have to sit before the Ontario Municipal Board? Is that option even available?

The Great Lakes must not become worse chemical dumps and more concentrated sewage ponds. The fish die and the turtles are gone.

Waterfront communities do not even have MISA regulations that would have begun to regulate the effluent from municipal treatment plants and non-point sources. It is impossible for us to understand how the interests of the public, especially to protect our resources for drinking

water, Lake Ontario, are going to be looked after. Increased human activity governed by less regulation will not keep us at the current levels of degradation.

How many more surveys have to conclude that over 25% of the public are turning to bottled water, do not trust the drinking water, before we get the regulations we need to ensure the public is getting some value for our tax dollars?

Parts per million, deaths per million and who is counting? With regulation disappearing, we will have to resort to the dead body count, and if so, how many more people have to die? I hear these air pollution things that Health Canada put out. Two people a day are dying from air pollution. What are we doing? I don't know. I can't tell if anything is being done. More incinerators. I don't know. It's just costing billions of dollars every year for this. We need to tighten up the regulations to stop the systemic poisoning of the environment which is now causing death.

How will the changes work, and who will pay? When a project is proposed, it would be prudent for the Ministry of Health to calculate how much we save the taxpayer by having industry and municipalities comply with more strict regulations. What can the Ontario health insurance plan and individuals save for? Puffers, in-home air and water filtration, energy increases, trips to the emergency wards, respirators, bottled water, loss of work etc?

When climate change takes on biblical proportions these days, we feel there is no room to relax on pollution. If risks to the environment are avoidable, we expect government to govern, and that is to put the screws where the regulations need to be tightened up.

I have to tell you, as a mother of a couple of kids, I went to sign my daughter up for Brownies camp, and I sat there with eight other mothers with little seven-year-old girls. We didn't get to talk about the fun they were going to have down in the woods; we had to talk about power of attorney, because four of those little girls had chronic asthma and one of them had to arrive at camp with a respirator. I was shocked. I really think we've got to do something about what's going up in the air and coming down in the deluges of floodwater.

1410

Ms Kyles: I'm going to be addressing deregulation and how I believe it affects the economy. My name is Debra Kyles and I've worked with the Safe Sewage Committee for about six years now. I also belong to a group called Coalition for a Green Economic Recovery. Their aim is to encourage industries and individuals working in the environmental end of business by promoting their products and their services and providing network opportunities.

The work I've been doing is centred around sewage treatment and water treatment and how they affect the air and water qualities. I have an honours degree in fine art design, and in order to bone up on the technological aspects of these facilities I have attended several conferences in the United States for engineers and operators. These were held by the Water Environment Federation, the American Water Works Association and the University of Washington in connection with the Northwest Biosolids Association. They're comprised of engineers,

businesses, consulting firms, municipal and private facility operators. It was at these technological conferences in the States that I learned where Canada fits into the western world as far as environmental technologies are concerned, and I was shocked. I was appalled, actually, and I was embarrassed.

When you compare Canada to the rest of the westernized world for the growth of environmental technology, industrial and consulting, we are almost at the bottom of the heap. It was with great embarrassment that I listened to a presentation in Phoenix by one of the largest consulting engineering firms in the States talking about working in a Canadian city. This is what he said — he attempted to be polite — and he's talking to engineers at the conference and describing his consulting:

"You must understand that when you work in Canada they have no environmental legislation. There are no real regulations and they are still dealing with systems that are now illegal here in the States. The operators and municipal engineers have nothing to work from because there are no real guidelines, and when you try to introduce the new technologies they don't have any Canadian firms who are aware of them, and so we have to explain it to them in detail."

I felt like I was from a Third World country. This is what it's like when you step outside of Canada: We're going backwards while the rest of the world is moving ahead. It pretty much sums up the effect that a lack of regulations can bring.

In the United States, when the federal Environmental Protection Agency launched and passed Bill 503, which regulates pollutant discharges from sewage treatment facilities and water treatment facilities, it spawned a boom in research and technology growth. It created thousands of jobs, and now US companies are exporting these technologies and they're consulting around the world. At the last conference I was at in Washington, DC, several companies made presentations on the work they were doing now in other countries, taking the technology with them that they learned because of the Bill 503 regulations. One of these cities was Cairo. These are big jobs we're missing out on.

If you multiply this effect by the vast number of possible industries not related to sewage and water treatment, you get tremendous opportunity for economic growth, and this is evidenced in the employment figures of the US compared to Canada over the last few years. As we've been losing jobs, they've been gaining over one million jobs. We're in a loss position.

Over 70% of the Ontario population wants stricter environmental regulations. If you're not representing the people of Ontario in this attempt to deregulate, who are you representing the interests of? By looking at the growth of technology in the States, Europe and Japan that is spawned by proper regulations, it's definitely not the general business population either.

Having one of the worst environmental records in westernized countries also affects tourism. I've talked to German tourists who were advised as a group: "Don't go near Lake Ontario. The level of contaminants from their industries is so high that it's dangerous to your health." Other European countries have referred to us in the media

as a bunch of beer-drinking louts destroying our own resources instead of using them wisely.

If you think about the dynamics of the Third World country — you have a handful of people making a tremendous amount of money exploiting the natural resources while the rest of the country suffers tremendous unemployment and is totally reliant on other countries for all their technological needs — then you've got to look at what deregulation does. We are now losing jobs to the States. Canadians are now having to move to the States to do their work because we have no need for their advanced technological businesses, industries and machines etc. Now compare that to the boom in employment in the United States as they meet stricter and stricter guidelines and regulations.

Last but not least, without legislated regulations municipal and private operators will not choose to self-regulate at a level equal to public regulation. It's been proven in the States. Bill 503 forced thousands of facilities to make changes. These regulations not only spawned tremendous business opportunities, but in the majority of cases that I heard at the conference I was at in the States, the cost to the taxpayer of operating these facilities was reduced when these stricter regulations were brought in. On top of that, from the consulting engineers who worked with the industries, most of the industries found that when they were reusing their chemicals and reducing and rethinking their systems, they ended up saving money within a three-year period of time and that saved money was after the cost of what it took to change this around.

All of this was spawned by Bill 503, which was brought in about two and a half years ago. It started 10 years before Bill 503. The industry started 10 years ago. They are now 15 years ahead of us and they are making money throughout the world with these technologies and there's a boom in the economy in the States.

Being just about the only westernized country in the world with little or no environmental regulation is going to hurt us financially as well as environmentally, and if you add the skyrocketing health problems caused by the level of pollutants now emitted, you have an even greater economic problem. Diseases are skyrocketing. Asthma is skyrocketing. The largest number of admittances to hospitals in the summer, which is a huge cost to us, are children with asthma. This is ridiculous. This is money that is being wasted.

Give people a fair playing field. Give them at least the level of regulation of their nearest neighbour — the United States. Canadian environmental businesses even now must do a great deal of their work in the US; there's no market for them here. Some of them have moved down there and never come back because they can't do any business up here. Why should Canadians have to move to the US with their technological businesses? It is again an embarrassment that we can't even employ our own people in Canada, that they must go to another country to have their new technologies appreciated.

You've got to look at the economics behind what you're doing and you have to look at how we look in the rest of the world. If you step outside Canada and look at their regulations and look at the way they look at us, I think you'll rethink your ideas.

Ms Churley: Thank you very much for your presentation. I know that both of you have become over the years, through necessity, experts in sewage issues, so I won't even begin to ask you technical questions about the sewage issue that you've been battling for a great number of years. I hear the frustration in your voices around that. I think we have a lot to learn from people from citizens' groups who have come forward, because we hear the other side — we hear a lot from companies and municipalities and proponents — but we have to hear and we have to listen to the frustration and anger, I suppose mostly frustration, that citizens have already been having with the existing system. Now we're about to launch into a new Environmental Assessment Act which, if I understand correctly, Karey, you want to make sure is understandable.

One of the problems — and there's a lot of material we don't have time to go into here — is that intervenor funding is now gone. The government did not renew the intervenor funding act. I'd like either one or both of you to talk about, from your experience so far and the complexities of, in your case, sewage issues, but also waste management issues, what would happen to groups like yours if you had to go to a complicated hearing on complex issues without any kind of intervenor funding. Could you participate fairly?

Ms Shinn: It's pretty well impossible because, as I think Mr Stewart mentioned, the language of these acts is unbelievable. As a resident who finds oneself underneath what's going to be a twice-as-big smokestack or something, what do you do? Go and get the act out of the bookstore. You read the definitions and then the rest is gobbledegook. You don't know what the history of fighting those diddy-bob (a), (b), (c)s with little Roman numerals after them is all about. It takes it right out of the hands of the public into a completely different playing field where you have to be equipped with your technical advice and your lawyers or you're just not playing the same game.

1420

On the one hand we're asked, "What are the alternatives?" and on the other hand we're ridiculed for not being technical experts. We have been to so many conferences, and I'll tell you I distributed these books; I hope you take them back to your constituencies. I send these out to the people who call me from all over Ontario because the technical expertise is here, and unless we can get the money to find it at the right time, for the right project, we get just bigger of the same old stuff we have now and we're not getting better. I think it's absolutely necessary, if there isn't the project funding act, maybe as an adjunct to mediation or hearings there should be some other mechanism for funding.

Ms Kyles: I want to add — again I have to use some US examples — our example here of being in a public consultation for six years is one of the most ridiculous things I've ever been part of. In the United States they work so closely with industry and the public that they can have the problem solved and the new technology beginning in two years. When they're working with the public and working with industry, and people work together for the same final solution, to make something work as best

it can, it really works well, but what I've found in the States is that when people don't have the money to get involved they go to court. It's a ridiculous situation. The public, industries, everybody should be involved in a situation and should have the resources to be involved in a useful way.

Mrs Ecker: I missed the first part of your presentation. I guess one thing I was having a little concern about is the people you were quoting and supposedly describing Ontario's environmental regulations. I had great difficulty understanding that.

Ms Kyles: Canadian, actually.

Mrs Ecker: I have been part of and have seen many times where this jurisdiction, Ontario, has set the standard not only for Canada but also for the United States on many things in environmental protection. There have been more problems and times —

Ms Churley: Bye-bye.

Mrs Ecker: Not bye-bye with this — where this jurisdiction, because of the concern and the importance that we place on the environment, has fought very strong battles with the United States because of their lack of regulation and their lack of enforcement of regulation.

There is one question that I would ask you because you made reference to the point that up here it's been taking you six years; down in the States they did it in two. I would certainly agree with you that what seems to be happening here with our regulatory structure is that we're substituting process and length of time for environmental protection. Is there not a way that we should be streamlining this legislation so that we can do the important environmental things, as you mentioned, without dragging groups such as yours through six years — or many of the other examples; we're up to 10 and more years — of work that they're trying to do before they get a decision, if any? Is there not a way to streamline here? Do you not agree that we should be doing that so we can focus on those very important environmental issues, as you've pointed out?

Ms Kyles: I believe the most important aspect of consultation with the public over a proposed project is that there is an actual consultation, that the groups are able to discuss it at length and that all the answers can be dealt with, all the questions can be answered and all parties are part and parcel of it. I think you need whatever requirement of time to do that. I don't think you can say, "All right, we're going to take this issue and you've got 30 days," because I know myself that sometimes you can't get documents for 32 days. You've got to give the proper amount of time.

I agree with you that to drag something out over six years is just absurd; the money that has been spent, and all that happens is that one group of people comes to the meeting and says, "This is how it is," and the other group says, "No, we don't believe it because we've seen this," and then they go away and they keep doing it. It's a waste of time and a waste of money. You've got to make sure there's communication.

In all the comments that I refer to I'm working within the sewage and water facilities. I know that down in the States their enforcement — in fact, I've got city by city of when they did their enforcement, what their enforce-

ment is, what their fines are. Some cities went from a \$500-a-day fine to a \$25,000-a-day fine when they found that what was going into their sewage system was ruining the ability to use that sludge in an economical, beneficial way.

Within sewage and water it's appalling. I wish you could be there. It's so embarrassing. I try to find the darkest corner of the room and I sit there in a very dark suit because in that particular industry it's quite appalling. If you don't have the actual communication going on, if people are not listened to and if industry is not taken care of, if they're not given the options they need in order to participate financially, if people aren't working together, whatever time limit you give is not going to be enough because people are going to work around it or work against it and there will be problems. But if you communicate and you do it properly, I don't see any reason why it should take six years, that's for sure.

Mr Gravelle: Thank you very much for your presentations. They were both very passionate. I recognize that there's a great deal of technical expertise behind your organization and what you do but I think it's important that you expressed yourselves in the way you did today. You're right about a number of things. Certainly, and it has been mentioned before, the average person has a very difficult time, if not well nigh impossible, understanding what a bill means or what legislation means, and it's very difficult to get through, so they often don't recognize what significance there is in the changes that go forward.

I think you're also right where obviously you're making reference to the increase in airborne things that are going on and asthma and all the health-related effects that are clearly there. It seems, if anything, like there's a greater need for us, from an economic point of view because with this government that seems to be the only way to make the case, may I say, literally to base it on an economic point of view and they just might listen. So I was very impressed by what you had to say.

I want to get back to what Ms Churley was talking about too in terms of intervenor funding. I think there tends to be a mythology, at least put out by some, that there's been too much intervenor funding, that it's been spent in a way that doesn't make sense. Somehow they manage to give it a bad name when it seems to me that the only way to be fair and the only way to actually have the process have a chance is to have intervenor funding. I just want to give you another opportunity to explain the value and the need of it.

Ms Shinn: I'd just like to make a comment too. We have undertaken this as a public committee almost — the sidebar on this one is, we hope no other municipality has to go through this again. If we can produce a track record of listing for people: "What are your options? You're a community of this size, you want to grow this much, these are your options. This will produce high-quality water, good-quality sewage solids. You can use this stuff and offset the costs of buying fertilizer and offset all those greenhouse gases" — that's 11,000 cars' worth of CO₂; we're talking half of the sludge we're burning at Metro. The benefits are huge.

If you can take an example out of an environmental assessment, and I think Barrie has done this with water

conservation, and instead of every municipality throwing money after the same water conservation program and the same environmental assessment to assess the same kind of sewage treatment they want in the same kind of municipality, you maybe only have to make that investment the odd time. Then, like case histories in law you've got the case history that says, "Okay, this year we looked at these technologies; they were well looked at, they were documented, they had some mediation, they did what they could do," that becomes part of the public record and some community that didn't know it was going to grow into four times the size it is today is going to be able to look at those documents — that's why we do our newsletters — and know where it can go to find out what it's going to do.

You can't do it without money. It's cost my family tens of thousands of dollars to go to conferences and things. It's cost Debra her job. We don't get a cent. I don't think this is right. I'm here as a resource. I get called by the MOEE to find their own documents. Please help us to get this thing done so that the public has a resource; and we can't do it with no money. I've just been lucky. We get money in Deutsche marks and US dollars. We've had to diversify our family income, and we do it so that I can stay alive doing this just long enough that hopefully we can finish it. We'd like to go to mediation, and that's the one part of the changes in the act I'm really looking forward to, but we do need funding.

1430

Ms Kyles: The cost comes out in that the beginning of this particular EA, the engineers said in their document page blah, blah, blah, there are no real alternatives to incineration. This is the most expensive technology, and operators in the States in their presentations have said, "Be very careful, because we had engineers recommending the most expensive thing and we luckily went and found other engineers and now we're doing something that's costing us a third." So from original documents that said there are no alternatives to incineration, we have two pilot projects of biosolids, which has been proven across North America to be much cheaper. We've done this through our own personal money. I paid to go to Phoenix, I paid to go to Washington, I paid to go to Seattle, and I think that's sick. I think it's really sick.

The Chair: On that compassionate note, thank you very much for appearing before us and putting the time in. It will be considered by the committee.

STONE CREEK RESIDENTS AGAINST POLLUTION

The Chair: The next group is the Stoney Creek Residents Against Pollution, SCRAP. Mr Clark, would you come forward, please.

On your agenda you may see for 2:30, Hazardous Materials Management magazine. Mr Crittenden will be coming and will start at 3. He's late so we substituted the witness.

Mr Brad Clark: My name is Brad Clark. I'm the chairman of Stoney Creek Residents Against Pollution. To give you a bit of background as to how I find myself here before you today, for the past two years I've been

arguing on behalf of the Stoney Creek Residents Against Pollution for complete and full public hearings into the Taro/Philip east quarry landfill environmental assessment in the city of Stoney Creek.

SCRAP has received and delivered over 10,000 signatures and petitions and letters opposing this landfill; 3,000 signatures were submitted specifically requiring that the minister refer the Taro EA to the Environmental Assessment Board for public hearings. We retained expert legal advice. We submitted our formal response to the minister citing the reasons why the Taro EA should be referred to a public hearing.

We cited the ministry's policies and guidelines which do not support the approval of this particular landfill, such as the Greenhat review guidelines, the engineered facilities policy and the Halton landfill criteria. We clearly demonstrated that the Taro EA did not meet the requirements of section 5.3 of the Environmental Assessment Act. But the minister, using her absolute discretion, ignored the deficiencies in the proposal and accepted it and later approved it without a hearing. Moreover, under section 33 of the Environmental Assessment Act, using her discretionary authority, the minister has precluded the Taro EA from the usually mandatory Part V EPA hearing.

The Taro EA, which has received national media attention, has been referred to by many observers as the most controversial landfill assessment ever approved by any minister without referring it to an EA board for public hearings. It is a landfill EA that is steeped in political interference, deception and misrepresentations, with a deliberate and total disregard for the legislated requirements under section 5.3 of the current EA act.

As a result of the minister's errant decision not to refer the Taro landfill to a hearing, we are compelled to comment on Bill 76 and the impact that it will have on the residents of Ontario. We are in fact compelled to sound a warning to all of our neighbours in Ontario that any broadening of the minister's absolute discretionary powers means a loss of public consultation, a tragic disregard for legislated EA content requirements and the forfeiture of our rights as citizens of Ontario to require independent public hearings before the Environmental Assessment Board.

There are a number of sections within the new act that deserve closer scrutiny and amendments. As Bill 76 stands, it is not an improvement of the current Environmental Assessment Act. It is, in our opinion, a regressive act that gives the minister sweeping, new discretionary authority under the guise of streamlining the EA process.

Our main issues and concerns — terms of reference: Under section 6.1 of the proposed act, the proponent's application will consist of terms of reference, intended to predetermine the content of the EA which will be approved by the minister. These approved terms of reference are binding on all parties and will be incorporated into the formal EA documentation. These terms of reference, as we understand them, will be determined by the proponent in consultation "with such persons as may be interested." This section needs clarification and regulation. The scoping or focusing of the content of an

EA cannot be allowed to preclude the legislated content requirements under section 6.2(2).

Furthermore, it is not clear who the proponent will be consulting with during their deliberations on proposed terms of reference. There's no direction or regulation in this regard. The statement, "with such persons as may be interested," is open to a broad interpretation. It may well be that a proponent could consult with their stockholders and their family. After all, it could be argued that both groups are interested parties. We believe that the intention of the act is public consultation. However, it is not clearly defined.

Recommendations: We believe section 6.1 should be amended in the following manner:

Public notice and comment periods must be required under section 6.1 with regard to proposed terms of reference. A regulation should be inserted that requires a minimum public comment period of 30 days through the Environmental Bill of Rights registry, as well as public notices being placed in local papers.

Under section 6.1, the proponent must notify the public of their intention to scope terms of reference for the EA. All interested parties should be consulted, including the local government, the traditional commenting agencies and the public at large.

An approval of terms of reference must be placed on the EBR registry.

Content requirements: Clearly, the act as written would allow the minister to approve terms of reference under section 6.1 that are binding — for example, no other terms can be added at a later date — which could and would preclude in a landfill environmental assessment the "needs analysis," "alternatives to," "alternatives of," and the "rationale." Section 6.2, formerly section 5.3 of the Environmental Assessment Act, is the very essence of an environmental assessment process and must be strengthened, not weakened. Allowing the minister to gloss over deficiencies of an environmental assessment on an absolute discretion basis is a breach of process and the public trust. Requirements should be strictly enforced and not displaced on a personal whim.

The Taro landfill decision is an example of what discretionary authority can do to an EA process. In essence, the minister dispensed with the requirements of section 5.3 for the Taro landfill. The proponent did not prove need. There is a regional landfill, which was improperly referred to as a domestic landfill in the environmental assessment, which has the largest approved capacity for industrial waste in Ontario. The Taro landfill proposal was only nine million tonnes. Furthermore, all of the objective commenting agencies agreed that there was no real or authentic alternative site comparison.

The outcome was predetermined by the proponent's comparing of the east quarry site to obviously less suitable landfill sites. This point was made by the city, the Niagara Escarpment Commission, the study group itself, the conservation authority and the residents. Just these two deficiencies alone have been sufficient for the Environmental Assessment Board to reject other landfill undertakings.

However, the environmental assessment branch glossed over these glaring deficiencies and the minister com-

pounded the injustice by accepting the EA documentation and then approving the EA without public hearings. In essence, the minister ignored section 5.3. She dispensed with parts of the requirements of the Environmental Assessment Act. The minister with absolute discretion approved a deficient environmental assessment which would never have survived the scrutiny of an EA board hearing. Clearly, the minister's action on the Taro EA foretells the future if Bill 76 is approved without amendments.

Recommendations: We believe that section 6.2 should be amended in the following manner:

Section 6.2(2): With respect to a landfill EA, the following content requirements should be added: a minimum hydrogeological standard; an impact analysis of contingency operations, for example, dewatering; and a psychosocial impact analysis.

Section 6.2(2) should be amended to ensure that all EA content requirements are met with no exceptions or exemptions.

Section 6.2(3) should be deleted. The minister may approve terms of reference that are binding but cannot preclude, exempt or dispense the EA from the legislated EA content requirements as prescribed in section 6.2(2). **1440**

Exemption declarations and minister's discretion: As I have stated earlier, Bill 76 is not an improvement of the EA act. The current EA act was written to protect the environment by forcing environmental assessment on undertakings that could have an irreparable impact on the environment. There was a mechanism in place whereby full public hearings by an independent body, the EA board, could be required. The EA hearing process, although cumbersome, guaranteed a fair impartial hearing of concerns and issues, verified that the content requirements of the act were met and allowed for a final decision free from political interference.

It is ironic that when the current legislation was being developed in 1974, there was a great deal of debate as to how much discretion should be given to the minister. At that time another Conservative government chose to eliminate a great deal of discretion by giving more authority to an impartial and independent tribunal known as the EA board. The government of the day felt that more emphasis should be spent on environmental planning and meeting the act and less efforts on lobbying and attempting to persuade the minister.

Bill 76 is a complete reversal. It is a regressive step where virtually all of the decisions on assessments are being placed within the absolute discretion of the minister. As we understand the proposed act, the minister can make the following decisions without any accountability for her actions: section 6(1), approve "binding terms of reference" without public consultation or comment; section 6(2)3, dispense or exempt undertakings from legislated content requirements; section 3(2), "declare" that the act, the regulations and requirements do not apply to any specific undertaking where it is in the "public interest"; sections 9(3) and 9(8), dictate the scope and length of public hearings under the EAA; section 27.1, empowered to issue "policy guidelines" that the EA board shall consider in their decision on any undertaking.

Giving the minister this amount of unprecedented discretion excludes the public from any meaningful participation in the process and removes all accountability. Ministerial decisions of this nature will invite judicial reviews, which will waste much more time and taxpayer dollars than the current EA hearing process. If a minister can change the rules or exempt undertakings from specific requirements at will, then the residents will have no choice but to challenge such decisions in court. Is that the kind of system we want? Is this working in the best interest of the public?

Evidently the government's public statement that Bill 76 will improve the environmental assessment process is nothing more than a semantic sugar coating. In fact we are witnessing a complete gutting of current environmental regulations, policies, guidelines and process.

Recommendations:

Section 3(2) should be deleted. The minister should not have the discretionary power to exempt any undertaking from the EA act, the requirements or regulations therein.

Sections 9(3) and 9(8) should be amended that the EA board has the discretion to decide scope and length of public hearings under the EAA.

Section 27.1 should be deleted. The minister should not dictate to the EA board any policies or guidelines to be followed during an EA hearing. The board should have the latitude to decide relevant case authority as determined in previous EA board decisions.

Conclusions:

Our current Environmental Assessment Act does need improving. It needs to be enforced. The policies and guidelines of the EA board should be adhered to by the environmental assessment branch. It defies logic that the EA board has the power to make decisions on undertakings; however, their decisions do not set a precedent for the EA branch to follow during EA documentation.

Environmental legislation is not about streamlining. It's not about cutting red tape. Environmental legislation is about protection. It's about securing our environment for future generations. Bill 76 has been developed and written within a vacuum. It was written in isolation from the human equation.

Environmental legislation should protect our community and residents from the risk of contamination. It should distance political decisions from environmental planning decisions. The approval of the Taro landfill EA, which did not meet the requirements of the current act, without public hearings is an ominous foreboding of things to come.

Stoney Creek Residents Against Pollution are opposed to Bill 76 as it is written. We hope you will give serious consideration to our recommendations enclosed.

Mr Pettit: I'd like to speak to you about the public involvement in the EA process. I had the opportunity to read the notes from your study group meeting from June of this year, and it seems the consensus there was that the key thing they would like to see is earlier public involvement, that there wasn't enough there, especially in your particular situation, and that a lot of the groups that were in opposition had the opportunity to participate as early back as 1992, but a lot of them didn't come forward until perhaps as late as 1994 and thereafter.

Do you think that with the introduction of the terms of reference and the guarantee of early public involvement at the beginning, that will be beneficial in the future to other groups who are in similar situations such as you were, just to help eliminate this 11th-hour finagling that sometimes goes on?

Mr Clark: First, I'd like to address the participation of our group in reference to your comment about the study group. The study group was formed by the proponent in this particular situation with the Taro landfill. This study group advertised in the local papers that they were opposed to the landfill and every month there was another article or ad in there showing that they were opposed. The residents were getting frequent documentation that showed there was opposition to the landfill coming from the study group. Then, at the 11th hour, they switched. The study group supported the proponent. So there was participation all the way through, we thought the residents were being represented and we were scammed.

To the other side point in terms of terms of reference, sitting down with the proponent, as the study group did, to scope out terms of reference early on, how can anyone in this room possibly tell me that would be a fair situation, given that the proponent has all the information, given that the proponent knows the Environmental Assessment Act, the Environmental Protection Act, the Ontario Water Resources Act and the numerous other acts that may have any pertinence to that particular proposal?

The residents have absolutely no understanding of these acts and they're taking all of the word from the proponent. The terms of reference would come down from the proponent, and the residents would be absolutely sitting back in awe and just assuming that they're being told the truth, and in fact it may not be the truth. So no, the terms of reference would serve absolutely no purpose at all in focusing or narrowing it, except it would help the proponent get away from the requirements under the act, and that's what we see that particular time frame as.

Mr Doyle: Hi, Brad. You had mentioned in your brief, and we had discussed this earlier, if a minister can change the rules or exempt undertakings from specific requirements at will, then the residents will have no choice but to challenge such decisions in court. It's that kind of system. "Is that the kind of system we want?" you had asked. Is it still, do you think, your intention to proceed with some kind of a court hearing?

Mr Clark: Let's put it this way: The way it stands at the present time, we asked for a hearing, the government denied the hearing. The requirements were there for a hearing. There is only one alternative left to the residents, and I find it extremely frustrating and tragic that the residents will have to spend hundreds and hundreds of thousands of dollars in taking the Ontario government to Divisional Court to challenge the minister's decision.

The government knows, and they have very good lawyers, that clearly the act states that the decision was made in her absolute discretion. So the difficulty is, how do we convince a Divisional Court judge to overturn a minister's absolute discretionary decision? Virtually impossible. The residents have been scammed. We have lost our opportunity to speak on this issue completely.

There was no hearing. Bill 76 will do that; it will enshrine it. Bill 76 is almost the justification of the decision on the Taro landfill.

Mr Gravelle: Good afternoon, Mr Clark. Thank you very much. I think you say it all in your conclusion, in terms of what the whole process should be about. It's not about streamlining, it's not about cutting red tape, it's about protection. I think actually, ultimately, if you put anybody in a corner, any one of the members, no matter what party, they would probably individually agree it was about protection.

Having said that, there seems to be this mood to try and do some streamlining, so I just want to try something out here and ask you, presuming the process was in place, presuming there was a bill in place that actually met some of the needs, do you think there could be some streamlining, as in having processes happen more quickly or not take as long a time?

I recognize your concerns about this bill and I certainly myself, my party and our critic shared a lot of those concerns, and I think some amendments are very much needed. But I guess I wanted to just think, if we're trying to be as helpful as possible, if all the right things were in place, is there a way that it could be done more quickly?

Mr Clark: I have been absolutely amazed in the last two years at all of the time frames we've heard about five years, seven years, six years, 10 years and on and on. I'm amazed that when you go to a criminal court proceeding, you can actually get a trial done relatively quickly, in 30 days, and you're out the door and there's a decision by a judge. But in this situation, when we deal with environmental assessments, the time frame seems to go on for ever and ever.

Mr Gravelle: Exactly.

Mr Clark: I don't have the answer to that. I really don't. I'd like to know, when you're looking at the time frames, what all are you looking at? Are you looking at the proponent's initial research from the very first stage, where they say, "Let's consider a landfill or an incinerator," to the final stage after the hearing, or are you considering how long it takes for a hearing to go?

1450

Everyone talks about streamlining this, but no one is actually dealing with, how do you streamline it itself? What you're wanting to do is all of a sudden scope it and say, "Okay, everything's going to be done within 40 days," or 110 days, or whatever the case is. If you deal with that, if you try to scope the time frame down, one of the problems you have is that inevitably in a complex situation there will be stones that have been left unturned. I have to look at, for example, a landfill environmental assessment proceeding. A landfill will have a contaminating lifespan of 300 years by some proponents' tables, 500 years by the Interim Waste Authority, and by the EPA in the United States, 1,000 years. I ask you, is a five-year process in relation to a 1,000-year contaminating lifespan that much?

Mr Gravelle: That's precisely the point, of course. It's got an extraordinary potential impact for a very long period of time, and I think that's what really we are grappling with. If there's a way of saying the processes could be done and you would not leave any stones

turned, I think probably all of us, including yourself, would say great. We'd all like to do it more quickly.

You made some obviously very, very strong statements. You've obviously had a pretty extraordinary experience, the Stoney Creek group, yourself, so you feel very strongly.

Tell me your thoughts — I don't think I'll be surprised — on the intervenor funding issue. This is crucial, I believe.

Mr Clark: In very simple terms, the government turned around and allowed the intervenor funding act to die on the table. It was not revised; it simply died. The statement I heard from so many people from the government is, "We're trying to save the government money." Intervenor funding came from the proponents. I want to know where the money's being saved by the government. If the proponent is the one that is actually funding the intervenor funding act, then how is the government saving money?

The reality is that the proponent lobbied very hard to allow the IFPA to die, and that's what occurred. Without intervenor funding, the majority of residents' groups, the majority of citizens' coalitions could not in any way, shape or form afford a \$350-an-hour environmental lawyer.

Mr Gravelle: I think you can certainly legitimately argue as well and make the point that a number of very important bits of information are provided as a result of the intervenor funding. It can be as good for the proponent in that sense.

Mr Clark: Generally they would argue that it's not good for the proponent, because generally it's an opposition situation.

Mr Gravelle: Some will say it's useful.

Mr Clark: You need a lawyer to proceed in this situation. We went as far as we could, over a year, without hiring a lawyer, and then in the final crunch we had no choice but to hire one from McCarthy Tétrault.

Ms Churley: Following up on the intervenor funding question, certainly we have had some proponents say they would like better clarification of that — not all, of course, but there are some who understand that it makes sense to have citizens' groups involved from the very beginning in a knowledgeable, meaningful way because it helps them down the road, and all of us. There are other citizens' groups who, it's very clear, with intervenor funding help save whole waterways from being polluted by landfill, in one case in particular because of their intervention, which they couldn't have done without the intervenor funding.

I wanted to come back to your last page, where I think you put it in a nutshell: "It was written in isolation from the human equation." We know that most landfills — we tend to forget this — do not actually go to a full EA. In fact, very few things actually end up before a full EA. When something does come before a full EA board, we know it's very complex and it's there because it is very complex. There are a lot of objections, a lot of problems. I think this is where it's naïve at best to think we're going to be able to do these really complex ones really fast.

I don't think anybody objects to setting up the time frames after the documentation gets before the government. Some of those I think are not realistic, but most people again don't realize that the stage where most of the delays occur is at the government review stage. So there are time frames there.

What we're left with is all the front-end stuff and the minister's discretion through all of this and the fact that in negotiating the terms of reference, the public can be left out of that because it's not legislated in, and the guts or the heart of EA, like looking at need and alternatives, can be negotiated off the table. That to me suggests there can be long delays at the front end because of these discretionary powers and the public possibly being left out.

I'm wondering, even in terms of dealing with red tape and shortening the time frame, do you think these changes to the beginning, and discretionary powers and lack of clarity about who, what and where, the consultation during the terms of reference process, could actually slow things down at that end?

Mr Clark: My gut reaction is that terms of reference could first off be scoped without public consultation. There are no public notices in the legislation stating, "We're going to look at terms of reference for a new landfill." Let's assume the terms of reference were dealt with and the proponent got together their little study group or whoever they were going to deal with and in consultation came up with terms of reference, and the minister approved those terms of reference. Now it goes before the public. The public now knows there's this EA happening, and the terms of reference have already been scoped and we didn't know about it. The public outcry would be monstrous. Talk about trying to jam something through without public consultation. Is that going to slow it down? Ask a proponent how much public opposition can slow down a project. It's immense. It can slow it at every single turn.

If they sit down and deal in an open fashion and actually deal with the requirements of the Environmental Assessment Act, and those requirements are adhered to by the EA branch — not glossed over, but adhered to: "This is what we need to approve this landfill; this is what you need to put it through" — then the residents know the rules of the game and so does the proponent. As it stands now, nobody knows the rules of the game except the minister.

Ms Churley: It can change from hearing to hearing.

Mr Clark: It can change with every EA. Gee, she really enjoyed the barbecue last Sunday with one particular proponent, and next thing you know it's approved. It can change completely with each EA because there's absolutely no regulation, no guidelines, no specifications. It's up to the whim of the minister. That's outrageous in a democracy.

Ms Churley: In terms of your particular situation now, as far as you're concerned it's over and there's nothing further you can do?

Mr Clark: No. We're awaiting a legal opinion paper from our lawyers at McCarthy Tétrault to find out how exactly we would proceed by taking the Ontario government to court.

Ms Churley: Would it prejudice your case, if there is one, if I ask you how you think the new act, if passed in this form, could affect your position legally? Perhaps you can't answer that at this time.

Mr Clark: At this point, this new act, if it's passed, would not be retroactive. However, there's one section of the act where again, at the minister's discretion, she might turn around and say it does apply to a previous EA. So we really don't know. We won't know until it gets passed and we have an actual legal opinion as to what is passed.

The Chair: Thank you very much, sir, for joining us this afternoon and sharing your views with great clarity.

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GUY CRITTENDEN

The Chair: Next we have, representing the Hazardous Materials Management magazine, Mr Guy Crittenden, editor-in-chief. Thank you for coming and joining us and sharing your thoughts. You may proceed.

Mr Guy Crittenden: Please let me know if you need me to speak up at some point. I have a bit of a chest cold and I tend to mumble.

I'd like to thank the committee for this opportunity. I'd like to start by saying that I do not officially represent any special interest or stakeholder group. However, I am the publisher and editor of two Canadian trade magazines. The first is Hazardous Materials Management, which is a Canadian trade publication on pollution prevention and control. The other is a new magazine called Solid Waste Management, which addresses municipal and commercial solid waste issues.

In the past seven years, as an owner and operator of these trade magazines, I've become fairly acquainted with some of the national and regional pollution prevention issues and have written extensively on the topic and edited articles from people who are experts in the field. It's in my capacity as a member of the environmental services industry and the waste management industry that I come before you today.

I'd also like to disclose to you that for the past two years, I have participated in the Conservative Party's policy advisory council on environment, and although the opinions I'm about to express are my own, you should know that I have that affiliation and I am aware that some of the government's enthusiasm for environmental assessment reform derived from the momentum that was created out of the council.

To get straight into the subject, I'd like to make a few brief comments about things that I think are good in the legislation, but then spend most of my time on a couple of areas of concern.

I'm going to say a few positive things to counterbalance some of the negative things you might be hearing from various special interests. First of all, the government is to be commended for having the courage to address a piece of legislation which has been allowed to fester during the previous two governments. Since it was introduced under a Conservative government, it's also fitting that it should be reformed by a Conservative government.

The legislation does appear to empower the minister to bring about much-needed changes in the board. In my meetings over the years with professionals in the environmental services industry, I can tell you that one of the greatest concerns they had with the environmental assessment process was in the staffing, the technical competence and expertise of the board and what they call the culture of the board. The combination of the complexity of the process and problems on the board had led people in the environmental business to become extremely cynical. Projects were being sabotaged at the end of the process by people who knew how to manipulate the system. This cost millions of dollars to many people.

The old legislation was commonly referred to by environmental professionals as the lawyers' and consultants' welfare act, which was a nickname well deserved.

The second thing that strikes me from reading the legislation draft is that the scoping of issues and the application of time frames is extremely desirable and may prevent this process from simply being a labyrinth into which meritorious projects disappear. Waste management infrastructure is critical to the public interest, as much as other more routine forms of infrastructure, which for whatever reason seem to be less controversial. Project proponents in this area deserve to find out early on whether their projects have a chance of success.

There are other things I like about this legislation, but in the interests of time, I'd like to focus on my areas of concern. I'd also like to point out, as if it needed pointing out, that I'm not an engineer or a city planner or a lawyer, and I will not presume in my remarks or in my written comments to micro-analyse the text of the legislation or advise you about technical details. Instead, I would assume that your committee will rely on the advice of recognized experts when drafting formal changes.

My concerns are twofold. The first is economic, as it appears that the legislation, as drafted, will continue to discourage much-needed private sector investment in the waste management infrastructure of Ontario, and the second point I'll elaborate on in a minute concerns the enhanced discretionary power of the minister.

On the first point, the legislation does not appear to offer the private sector waste management companies enough business certainty to make significant investments in waste management infrastructure in Ontario. I understand that the OWMA, the Ontario Waste Management Association, and other similar groups have advised you on these matters. There's no shortage of detail on that. I've read the OWMA's suggested changes and agree with them, so that's all I'll say about that point.

But I think it is worth mentioning that if at the end of the day — I'm just going to skip through my notes here — we have new legislation but no significant investment by the private sector in landfills and other waste management projects, the entire exercise of environmental assessment reform is going to be pointless.

A large amount of our province's waste is exported to the United States currently. This doesn't disturb me for any ideological reasons, but it's an appalling loss of economic opportunity and tipping fee revenues which are being exported south of the border for no apparent environmental reason.

Ontario, as has been pointed out to you by others, is competing with neighbouring jurisdictions such as Michigan where the formal dimension of an EA takes just 120 days. We are now looking at a portion of Metro Toronto's residential garbage about to be exported and some of it likely to go as far away as Utah. That, to me, suggests that there is something very dysfunctional about the current process, so I urge this committee to take seriously the suggestions of the waste management industry.

The second point of concern — this is the one that I'm less certain you've heard a lot of complaints about, at least from people who are at least philosophically sympathetic to what the party is doing and generally approve of the environmental reforms — is the concern about the discretionary power of the Minister of Environment, which appears to be enhanced. I can understand the impetus for this. In attempting to cut through the red tape, to use the government's own jargon, it would seem desirable that the minister be able to use his or her judgement to allow proposals to move forward at critical points. They're trying to cut through various logjams that appear.

However, this benefit is also potentially a flaw, and what used to be called the lawyers' welfare act may become named the lobbyists' welfare act. In my own straw poll canvass of opinions of people in the waste management industry and the environmental services business, a very frequent comment that I've heard concerns the lack of arm's-length objectivity at the review, and there is a concern that waste management companies, if you read this legislation, are going to be even more encouraged than they already are to lobby the minister and his or her staff. In other words, there's far too much potential in this legislation as drafted for it to simply turn the whole thing into a lobbying game and to look for special favours or to look for the minister to exercise discretionary power in their favour, and that concerns me.

It's possible that people who approve of the current government will be comfortable with this, but what concerns me is if I imagine only a few years ago we had one minister, and I don't want to get too partisan here, but we did have one minister who had what you could call an ideological bent against certain technologies and approaches, and to some people in the waste management industry itself, that person's decisions seemed arbitrary and unfair, and some of these decisions led to a circumventing of the full EA process. We had the Interim Waste Authority, which cost in excess of \$80 million, with no perceived extra value. We had a wet-dry facility in Guelph, which may be an interesting technology, but it came in at an exorbitant price because it was rushed through without proper consideration. So the thought of any Minister of Environment having even more arbitrary discretionary power is indeed disturbing.

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I suggest that if one carefully re-reads the draft legislation as you have it now and imagines in the future some time a biased, unscientific or anti-business Minister of Environment being presented with a project proposal, you must ask yourself, could he or she use this legislation

to derail or stymie positive projects that are environmentally sound? I would answer yes. That's a pretty big concern, because the environmental assessment process is supposed to judge things on their environmental merits.

There are specific things in the draft that feed into this. I'm a supporter of the concept of mediation, but when you think of the discretionary power of the minister — let's imagine a theoretical minister who doesn't make decisions that we might think are good ones — that mediation section could be used and abused. Imagine a minister presented with a project that they wanted to derail. They could send it to mediation, knowing perfectly well that when you get NIMBY groups, not-in-my-backyard groups, opposed to something, you're not always going to get a complete resolution of an issue. Then that could be used as an excuse to derail a project, and the minister comes out and says, "I'm sorry, but the mediation failed," so the project is killed.

I imagine the government wants mediation to be a tool and a step towards consensus building, but right now I don't think it's nearly clear enough about how it's to be used and how clear the resolution has to be. Given that scenario, it will still be possible potentially for a handful of opponents or even an individual to derail a project.

In the interests of time, I'm going to skip forward in my notes a little bit. There's a section in there about of the minister making the board beholden to certain policies, and there are other things. I'll just go right to reading the one paragraph that I think is the worst this way and is most typical of the potential problem we have here. I'm not sure of the exact annotation in the legislation, and I wouldn't suggest it's necessary for you to read this along with me, but in my copy of this, it says "Decisions on the Application," and there's a section where it talks about when the minister can refer an issue to the board:

"If under subsection 7.2(3) a person requests the minister to refer an application to the board for hearing and decision, the minister shall refer it to the board unless in his or her absolute discretion,

"(a) the minister considers the request to be frivolous or vexatious;

"(b) the minister considers a hearing to be unnecessary; or

"(c) the minister considers that a hearing may cause undue delay in determining the application."

Maybe I'm missing something here, and maybe a lawyer would go over this and say, "Oh, Guy, there are clauses and subclauses that address this," but to my reading, this is an area of concern, and frankly, if any political party were putting this forward, I would be very worried about this. We have seen from the private sector waste management business some very serious abuses of power, some very good projects stopped and some very stupid projects go forward, often at great expense to taxpayers, because of this kind of unbridled discretionary power of ministers.

I'm not sure what you're going to do as you redraft this legislation to deal with that, but I would take a very close look at paragraphs like that and I'd be saying to myself: "What if we had this imaginary hostile minister in power in the future? Is this legislation going to serve

the public interest not only under this current government but for future governments?" I think it's in the long-term interests of the province that you do this once and do it right and be aware that this discretionary power is potentially a liability.

I'd like to close my remarks with the following quick analogy: I don't know how good this is, but I'll try it on. Imagine visiting Ontario and discovering that all the airports have fallen into a state of disrepair and are closing, which in Toronto is not hard to imagine. A strange piece of legislation called the Airport Safety Review Act is so complex and uncertain, so overly protective of safety that no one builds airports, so instead of flying into Toronto, people land in Buffalo, Rochester or Detroit, then pay for a truck or train trip across the border.

In this scenario, the economic losses are stunning and businesses are investing elsewhere. Airlines and would-be airport builders point out that the government's revised safety legislation will not encourage a single new airport to be built, yet it's uncertain whether the government is taking their concerns seriously. The legislation allows the minister extraordinary discretionary powers to reject projects almost out of hand.

Now substitute waste disposal facilities for airports and substitute the new environmental assessment legislation for the revised airport safety act and you have a reasonably accurate description of the current state of affairs. Please correct the situation.

That is the end of my remarks.

Mr Gravelle: Good afternoon, Mr Crittenden. I think your position is pretty clear in terms of how you think things should be done differently. It certainly is clear that you basically feel that there are some real opportunities for economic development or business growth that are not happening as a result of essentially the process that's been in place. Is that a fair summary?

Mr Crittenden: Yes. When companies consider whether to export garbage to the United States or to build infrastructure here, it's a very obvious business decision to export to the United States because of the procedural uncertainty and the logistics of building something here because of this process.

Mr Gravelle: But there are obviously various other aspects of environmental protection; I'm sure you wouldn't argue. There are all kinds of elements that we need to be very careful of. The thing I'd like to find out from you is, what do you think the balance needs to be? It seems very strongly so that you feel, aside from your concerns about the minister, which I think we share as well in terms of the minister's discretionary powers, that indeed you want to open the shop up more; in other words, make it easier. I presume that you have as much concern about the environment as — at least, I would hope you would.

Mr Crittenden: Absolutely.

Mr Gravelle: Certainly some of the terms you use — I know you have some semi-scathing things to say or at least some credible things to say about the "professional environmentalists" as you phrase them. Anyway, I very much would like to get a beat as to where you come from. I appreciate your being up front about the role you

played in terms of the Conservative policy reform. Where is the balance? Is the balance going to be always based on, "This is going to be able to give us more business opportunities," which we all want in this province. But at what cost? That is what we're grappling with all the time, and is the human element involved? I don't know if you were here for one of our previous presenters; there are a lot of other issues at stake here.

Mr Crittenden: I was here for the previous presenter and I don't think it would be appropriate for me to critique his presentation. I'll just say that I personally reviewed the files for the Taro landfill expansion and I did approve of them personally on their technical merits. I think the public interest was well served by that expansion being allowed to continue. That is the kind of thing I would like to see more of.

But one of the things that has to be stated up front is that in none of this waste management infrastructure would anybody in my peer group or, I suspect, the government be looking at tradeoffs of environmental protection. It seems that this whole environmental assessment becomes hung up around not-in-my-backyard issues. Those are very vexatious and, even in the final form of this act, will probably still haunt and torment us.

There's nothing in what I'm proposing that should make it possible for people to build environmental projects and waste management projects that are not environmentally protective. This is not rocket science. You can go to the States and see state-of-the-art regional landfills, high-tech modern incinerators. You can see some of them in Ontario. The PRRI facility in Brampton is an incinerator that people drive by and they have no idea that they're driving by an incinerator.

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Mr Gravelle: You know not everyone shares your view, of course. That's not a surprise to you.

Mr Crittenden: I think the characterization of the United States as some kind of pollution haven, given Canada's record, has to be one of the biggest jokes of all time. We should be copying aggressively what the United States is doing. They are way ahead of us on pollution abatement and waste management. In fact, this piece of legislation, before it was revised, kept Canada about 10 and 15 years behind other countries in terms of building environmentally protective waste management infrastructure.

Ms Churley: Thank you, Mr Crittenden. Your presentation was predictable but interesting, and although some of us were aware of your association with the Conservative Party before you came in, I thank you for pointing that out, because we would have.

Mr Crittenden: There are not a lot of environmental journalists who support the Conservatives, I admit.

Ms Churley: That's true. But as I said, it's predictable but interesting in that it shows, given the presentation we had before you from a citizen who had direct involvement in the process — yes, it was partly a NIMBY concern, which is legitimate if you're going to have a landfill in your backyard. We all acknowledge that. But there are bigger concerns as well. I think it's interesting to see the difficulty any government has in trying to reach some kind of balance, because certainly I don't

support your position at all and I take some exception — although you have every right as a free citizen — to your characterization of Ruth Grier. Although you didn't mention her name, her particular philosophical bent is different from Brenda Elliott's and this government's and your philosophical bent.

That is one of the difficulties we have in trying to reach some kind of balance in this, but I would say that at the end of the day what we all have to keep in mind is environmental protection and finding the most viable, environmentally sound way to deal with our garbage, which is also a resource consumption issue which you cannot leave out of the equation and which unfortunately often gets left out.

My fear is that in this process and this new legislation that's coming through, in order to try to cut red tape, it will be, "Let's try to figure out what the best lining is to put in the ground and stick it in the ground and then we've got the best environmental thing for that hole in the ground but let's forget about all the rest because it's process." I think this process is fundamental to the citizens who, after all, are the taxpayers and have to live with the environmental degradation at the end of the day.

Mr Crittenden: Are you asking me a question, though?

Ms Churley: It's my time; I can use it how I choose. I hope there's time at the end. How much time do I have left?

The Chair: Two minutes.

Ms Churley: What I will get to is that there are great differences in views on how best to protect the environment. Mine is very different from yours, the NDP vision is different from the Tory vision, but there is one point we would agree on and that's the discretionary powers of the minister, because just from the purely business point of view people want certainty. Businesses want certainty and transparency because, as you say, the more discretion is in it, then, come the next election and there's a change in government and the more discretion you have, the more that uncertainty is there. My question is about your one concern about this bill, that the discretionary power gives more uncertainty down the road to a proponent who wants to get involved in anything that deals with EA in Ontario, and that should be fixed.

Mr Crittenden: Yes, that is my major concern. I'm not saying the minister should have zero discretionary power but I think this legislation could be redrafted to make it much more evident to people when and where that discretionary power kicks in and what the limits of it are. I don't know, the committee and the government are going to have to talk to people who are recognized experts in the field to find out how to tighten that up. I would not presume to know how to do it myself, but it just leaps off the page of this legislation as something that needs to be addressed before it becomes etched in stone.

Mr Galt: Thank you for your presentation and thoughtful comments and words. There's always a struggle between how much the minister should have and how much should be at arm's length etc. I point out that we're approving the terms of reference at that point and also recognizing the possibility of approval of harmoniz-

ation with the Canadian Environmental Assessment Act. All the rest is essentially the same as in the old Environmental Assessment Act. Are there areas from the old one that are going to roll through into this bill? Are there specifics where you would like to see that at arm's length, and if so, what kind of body should it be at arm's length in?

Mr Crittenden: Ultimately you have an Environmental Assessment Board and then you have a hearings panel, be it the EA board holding hearings or joint board hearings. I think there's an understanding that the EA branch, the EA board and the hearings panel, if it goes to a hearing, the more the decisions can be concentrated in their hands and the less they are subject to political "interference" by an elected politician who is accountable to voters, the more of an objective arm's-length review it will be deemed to be.

What happened in the past was that the branch, the board and the hearings went out of control. They developed a culture of their own which was, one could argue, obstructionist, so there are things you can do to change the system to make that process and those three entities or stages more effective and accountable. It seems to me that the government, as one of its tools for making that happen, has increased the discretionary power of the minister at certain points. I would like to see less emphasis on that and more emphasis on other things.

There's just been too much of a history, even when the minister didn't have as much discretionary power, of it being abused. I have faith that maybe the current government will make nothing but wise decisions, but who knows what the next one will do. So you might as well write a piece of legislation that will endure over many years and not start us off on another path which we're going to have to undo in a few years.

Mrs Munro: I have one question that relates back to comments you made earlier. You mentioned, in American jurisdictions, how much further ahead they are. I just wonder if, for the record, you would care to share with us an exemplary process that you've come across in your experience.

Mr Crittenden: I'll give you one example, since we've used it already. There's a tale in our industry of Allen Fracassi, the president and CEO of Philip Environmental, having the governor send his plane to Hamilton to pick him up and fly him to Michigan to meet with the governor and to discuss why Philip Environmental should move all its business to Michigan because Michigan would assist them in moving forward with an industrial landfill and wouldn't give them the kind of grief they were getting in Ontario.

I think it could take months or years to do the preliminary work on an EA, siting a new major facility, but Michigan has laws that say the turnaround time for the government to review and improve your environmental assessment application is 90 days for this and a total of 120 days. A project proponent with a good proposal that's environmentally sound can expect that kind of turnaround. That's a state that's immediately adjacent to Ontario, and we're competing with them for business and for environmental protection business.

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The culture of American politics is such that they will do things like fly Allen Fracassi down there and talk to him. Meanwhile here, think of the years that Philip spent going through a very special version of the EA process that they designed to have the most extensive public consultation that's ever been had. Still, even with this government, they had a string of conditions attached to the approval of their landfill expansion. It's unbelievable. You have Michigan. You have other states. I think Minnesota has something that's got favourable reviews, and the list goes on. But I would take a close look at Michigan, because that's what we're up against. I think Michigan can do everything it's doing and have not only the same standards but even higher environmental standards than Ontario.

Mrs Munro: That's the second part of my question. Obviously in this process here a number of people have been very dissatisfied with the process, so I have to ask you: Are people in Michigan happy with the process? Why is it that they can accept this kind of thing happening in their communities and we have a problem?

Mr Crittenden: I would argue that Michigan and other jurisdictions have made the decision that they're never going to make everybody happy. I have no doubt that if you went to Michigan and walked around the neighbourhoods of some of the landfills you would find some people who are not thrilled about it. But the point is that needed infrastructure is built. I'd say the so-called silent majority is reasonably happy with what's going along, as long as there's no pollution occurring. This idea that we have in Ontario that we're going to create a system in which everybody is happy at the end of the day, and that there's nobody who's going to be still railing on the barricades after the decision is made, is completely unrealistic. It's never going to happen.

The Chair: Mr Crittenden, thank you kindly for being with us this afternoon and sharing your views. We appreciate your being here.

CANADIAN AUTO WORKERS

The Chair: Our final witness of the day is Cathy Walker, director of the health and safety committee, Canadian Auto Workers. Welcome.

Ms Cathy Walker: Thank you very much. The Canadian Auto Workers represents more than 150,000 members in the province of Ontario. We are concerned about the environment for two main reasons: First, our members are residents of the communities of Ontario. They and their families are affected when the environment is harmed. Second, they work in industries which may produce environmental harm, either directly from pollution emitted from their workplaces or indirectly as a result of pollution from the products of the goods they produce.

As responsible individuals, we want to ensure that our work produces as little adverse environmental impact as possible. Public polls have shown that the Ontario public places environmental protection high on their list of priorities for tough and effective government regulation. These polls reflect the opinions of our membership.

It is for these reasons that we come here today to address our concerns about Bill 76. We see this proposed piece of legislation as a retrogressive step. It will retard efforts to improve the environment.

The name of Bill 76, the Environmental Assessment and Consultation Improvement Act, is an example of double-talk. In fact, the bill does nothing to improve environmental assessment and consultation. We submit that the bill should be withdrawn. The environment would be better off with present procedures in place.

We support the submissions of the Canadian Environmental Law Association and encourage you to study carefully its thoughtful and detailed critique of Bill 76.

Harmonization: Harmonization upwards, to the most stringent level of environmental protection, is a concept we wholeheartedly endorse. We suspect, however, that the government's real plan is to harmonize downwards, to the least effective standard of protection.

We are particularly concerned that the minister would have enormous discretion to vary or dispense with any requirement under the statute when making a harmonization order and would be able to grant wholesale exemptions from the statute, all in the guise of harmonization. This is deregulation at its worst. Why have a law at all if it's so easily evaded?

How can such sweeping powers to allow avoidance of the law be contemplated without even a requirement for public notice? How can such avoidance of the law be contemplated in complete secrecy from the public eye?

Sweeping exemptions to the requirements of the law by any proponent, undertaking or class thereof makes a mockery of having requirements in the law. If ordinary residents of a community want to have their say about an exemption application, what requirements are there for comment? Surely those Ontario residents who would be affected by a proposed exemption have a right to comment on something that may adversely affect their community.

If big or small business seeks to avoid complying with the law and makes promises that certain procedures would be followed, what stipulations are there that even these lesser procedures would be followed? If the proponent chooses to ignore them, what provisions are there for invoking penalties on the proponent to force them to comply with their commitments? Surely leaving loopholes big enough to drive a truck through would put the minister in an untenable position if a community were outraged by flagrant environmental harm caused by a proponent. Would it make any sense for the minister to comment lamely that there is nothing he or she could do if the proponent violates an exemption order?

Another form of blatant deregulation is the proposed development and approval of binding terms of reference that establish the scope and direction of the environmental assessment process for particular undertakings. Once again, Bill 76 fails to provide for public input in the development of the terms of reference. This public input should be prior to the submission of the proposed terms of reference to the minister.

There are no requirements for the contents of the terms of reference. They should include all of the elements of a full environmental assessment. Here, as elsewhere, there

is a need for the proponent to provide full funding for participants to ensure that public review of the terms of reference is thoughtful and well researched.

It is critical that there is full and effective consultation with the public. Community residents lived in the area before the activity which would possibly harm the environment began and will live with the consequences for decades to come. It is important that every avenue be granted to them to ensure they have the maximum opportunity to comment.

Bill 76 must be amended to ensure there are requirements for meaningful public consultation from the earliest state of environmental assessment planning and throughout the entire environmental assessment process; clear, timely and appropriate notices at all key points of the environmental assessment process; free and timely public access to all environmental assessment documentation; and mandatory participant and intervenor funding.

As long as the government and the proponent have nothing to hide, there should be no problem with these proposals for amendments to Bill 76; if they do, then the entire bill is ill-conceived and should be withdrawn in its entirety.

Whisking an ill-considered proposal through a review process will only cause trouble for the government in the long run. Once a proposal is etched in stone, it becomes much harder to meet the condemnation of public disapproval. Better to ensure that any proposals are thoughtfully considered before there is public opposition.

The ministry employs a large number of experts who have the professional expertise to consider and reject if necessary any application by a proponent which does not meet environmentally sound criteria. They need sufficient time to adequately consider environmental assessments submitted by proponents. We support the CELA proposal for a 90-day review period rather than a 45-day review period.

Mediation must never take the place of the government's obligation to do its job to protect the environment. When it is used, however, there must be requirements for the proponents to provide participant funding to ensure that the public is able to participate meaningfully in mediation.

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Once again, this new ministerial authority must be curbed by an opportunity for the public to comment. Written, published reasons why the minister has deferred or referred a matter must be given. And there must be criteria prescribed which limit the ability of the minister to defer or refer matters.

There must be a right to a hearing if it's requested from the public. When public hearings are held, there must be public notice and comment opportunities where the minister promises to vary or substitute a board decision or to require a new board hearing or to reconsider, amend or revoke a previous environmental assessment approval or conditions.

Streamlining, by any other name, is deregulation. We are opposed to it. Laws are laws. They should be followed by all Ontarians. Class environmental assessments are effectively deregulation for a particular class of industry. As an absolute minimum position, we support

the CELA recommendations for fairness, public input and timeliness.

The best law in the world is useless without stringent compliance. At a minimum, if this shoddy deregulation exercise, Bill 76, becomes law, there must be provisions that allow the minister to enforce what little remains in the form of approvals, special deals, as well as the procedural and regulatory requirements of the statute.

Bill 76 must prohibit pre-approval site alteration and authorize the minister to issue restoration orders.

There are so many and varied reforms omitted from Bill 76 that it's difficult to list them all. The EAAC recommendations, however, are the minimum that should be included in the proposed statute. They include private sector application of the Environmental Assessment Act; assessing government policies and programs; cumulative effects and ecosystem approach; integration of environmental assessment and land use planning; and restoring and maintaining the EAAC itself.

We conclude by urging you to recognize how little public support there is in the province of Ontario for environmental deregulation. We urge you to withdraw this ill-conceived piece of environmental deregulation, Bill 76.

Mr Galt: Thank you for your presentation and coming before us today. Recently we had a presentation concerned about environmental protection. They thought one of the ways of protecting the environment was to try to keep landfill sites from occurring, and to do that they thought it was a good idea to have excess process, so we'd spend a whole lot of time working and would probably not end up with landfill sites. Is that the kind of philosophy you're suggesting? Do you have the same kind of thinking?

Ms Walker: Our feeling on landfill sites is that there must be much more effort devoted to reducing waste in the first instance, to reusing and recycling far more than is presently done. Certainly the blue box efforts are a first step, but there is far more that could be done. When you look at the example, for example, of West Germany where you're not allowed to package material without being required to take back that packaged material, where they have programs for recycling all parts of cars to make sure that they don't simply wind up in landfill sites, that they must be reused wherever they possibly can be, you can see that we could do far more in North America than we presently are. We'd greatly reduce our need for landfill sites.

Ms Munro: Thank you very much for coming here today. On page 1, under "harmonization," in the second sentence you say, "We suspect, however, that the government's real plan is to harmonize downwards," and I just wondered if you could clarify that. Are you referring to federal legislation there?

Ms Walker: Unfortunately, federal legislation as well is really deeply problematic. The federal government is, I believe, trying to get out of the government business — they've certainly told us that in a number of contexts — and give to the provinces a number of environmental responsibilities. We think that's wrong. We think there is a role for the federal government to play in environmental protection.

But the harmonization we're particularly concerned about here really is harmonizing downwards to the standard Alberta is setting in all sorts of areas. They have really led the way à la New Zealand in trying to get out of the government business. We're deeply concerned about that. We really do believe there is a role for government and a role for law.

Your party has quite a good record in the province of Ontario, prior to the last year, of recognizing that there is a role for law and a role for leadership on the part of the provincial government, as well as the federal government, in environmental regulation.

Mr Stewart: Needless to say, you're very supportive of the present legislation. One thing bothers me a little when you're talking about public opinion. Clearly, under the present legislation the province set the process, period; the province set the criteria, period. The only time people got involved was in the waiting process of that. Due to the process, the public couldn't get involved until the final sites were announced, and then it hit the fan, became very confrontational etc.

What we're suggesting in this is that we get the public involved immediately. I have difficulty with your rationale of the old one, how great it was, when there was no public involvement at all. Everything was set by the province that we had to abide by — this is in landfill — whereas now there's some flexibility for the people to get involved before it is in their backyard.

Ms Walker: I would take your comment as being genuine if there was to be intervenor funding right from the beginning. If there isn't, I don't think there's much opportunity, really, for the public to become meaningfully involved.

Mr Stewart: But there wasn't under the old legislation either, for intervenor funding, until you got to the hearing. Participant funding, yes, if it happened to be done by the proponent, but not otherwise. My concern is that you want public involvement, which I believe has to happen, but it can't be done under the old legislation; it has to be done under the new.

Ms Walker: Will you commit to introducing participant funding much earlier in the process? Then I'd think you'd have a point.

Mr Stewart: I'm talking about public participation, not necessarily intervenor funding.

Mr Gravelle: Thank you very much, Ms Walker, for your presentation. You really hit the nail on the head in terms of some of the key elements that are of great concern and have been brought up by many of the presenters today and in the last week or so, certainly in terms of the whole public consultation aspect.

I think you're quite right. The bill is basically being trumpeted as one that will enshrine public consultation. That is the spin the government is putting across, when indeed it's not clear that there will be more public consultation. Your reference to the terms of reference — "such persons as may be interested" is the term they're using in terms of the terms of reference at this stage; that's not particularly clear, so I think it needs to be clear. I have no difficulty agreeing with you.

I think you're right, too, when you say, "As long as the government and the proponent have nothing to hide,

there should be no problem with these proposals for amendments to Bill 76." I think that's true.

I just want to get a greater sense from you, if I can, as to the value — we've asked this of a lot of people and I'm going to ask you as well: the whole value of intervenor funding, participant funding, but intervenor funding in particular. What difference does it make? In other words, if you don't have it, which we don't have now, what does that mean in terms of the public's involvement in the process?

Ms Walker: Let me give you one example of something that was a very important public issue, environmental issue, which was the whole issue of, should there be uranium mining in the province of British Columbia? That issue was of importance to everyone in the province, really. There were sites all over the province where there was uranium exploration. Should the public have an opportunity to meaningfully comment in an issue like that that obviously involved the entire province, that obviously involved the possibility of environmental harm? We knew about the example of the province of Ontario where uranium mining had gone on, caused harm to workers, caused harm to the environment.

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Could citizens in small communities like Atlin, all sorts of places you've never heard of before, Clearwater, tiny little villages that were all affected by this, possibly have had any meaningful role to a royal commission of inquiry had it not been for intervenor funding? It didn't matter whether it was a citizens' group, whether it was the United Church, whether it was the medical association, whether it was the union movement. Whoever it was required some opportunity to hire people to do research, to find out what had happened in Ontario, in other provinces, to bring in people who had mined, who were experts in radiation issues, who could provide meaningful and useful comment to a royal commission.

It seems to me that's a really good model any time you look at the whole question of intervenor funding. You can't make informed comment, you can't even arrive at hearings to listen to what other people are saying, without some opportunity to have funding to be there. The public simply can't meaningfully comment otherwise.

Mr Gravelle: Exactly, and as we said before, this legislation and this area are complicated. The average person shouldn't be expected — but if indeed the government believes the public should be involved, I think it's only fair to accept the fact that there needs to be some form of intervenor funding to enable them to do it. And there is truly an advantage to that process; there can be a great deal learned from the people who are involved in the intervenor funding. To me, it's something that needs to be looked at again.

Ms Churley: Thank you very much for your presentation. I want to come back to the issue around public involvement and participation based on the questions by Mr Stewart.

The reality is that de facto under the present EA act, there is public involvement from the very beginning. It's great to see some of that enshrined in legislation, but it's also been used as a red herring, because it gives the government an opportunity to enhance the title of their

bill. But the reality is that it is a red herring, for two reasons: At the end of the day, public consultation on this bill is actually lessened because (1) there's so much more discretionary power by the minister that can shut the public participation out, and (2) the intervenor funding act has been allowed to sunset with nothing in its place, so there can be no meaningful participation in complex, complicated hearings that go before a board.

The other ones don't go before a board; most things that come up, the majority — I don't know the percentage — don't even come before a board. If they do, they're very complex and require a lot of expert witness and lawyer involvement.

If the government is really serious about public consultation, they will make sure there is some form of intervenor funding put back in place, participatory funding, and that public participation is enshrined in other areas of the bill, including that very important terms of reference part, and throughout in other places where the minister has a lot of discretion. That's what has to be looked at if this is truly serious, otherwise it's a farce. I thought it was really important to clarify that, because otherwise it's a shell game. It sounds good, but it's not the reality.

I wanted to ask you about what's left out of this bill. One is the intervenor funding. Because the bill will not be withdrawn, will you feel more comfortable, be satisfied to some extent, if the government, in particular in the two areas I mentioned — public participation up front on the terms of reference, all alternatives, the full EA, no discretionary power to negotiate some of those off the table at the front end; and public participation, with intervenor funding. That would go a long way towards helping me accept this bill. Would that make a difference to you?

I could live with the time frames, by the way, once it gets to the government review, because that's where the holdup is. I would want to change some of them; some of them are unworkable. But that I can live with. It's that upfront part and other areas of the bill where the public is shut out and it's too discretionary.

Ms Walker: That's really critical. We spent a long time lobbying the federal government to withdraw Bill 162, the Regulatory Efficiency Act, which I think was an abominable piece of legislation that would have gutted not just environmental regulation but much more. I think this seeks to go in the same direction and that's wrong. Ministerial discretion ought to be fettered by laws. They ought to play by rules as well, and the public ought to know what the rules are so that no one can go in the back door and make some sort of special deal by virtue of the fact that they know who to talk to and what means there are to evade the rules.

I would agree, meaningful public participation is critical — there's got to be intervenor funding for it to be meaningful — and certainly there's got to be far less discretion for the minister.

The Chair: Thank you kindly for coming this afternoon and taking the time to prepare and share your views.

That was our last witness. Is there any business from the members? If not, tomorrow morning we will hopefully all arrive at the airport in North Bay and we'll begin the morning at 11. We have nine witnesses, right through until 4:30 in the afternoon, so get some good rest tonight.

There is also a subcommittee meeting on the 125 in room 110, if I might remind those people.

Ms Churley: I guess de facto I'm on the subcommittee.

Clerk of the Committee (Ms Lynn Mellor): Not for that issue.

Ms Churley: What issue is it?

Clerk of the Committee: It's the standing order 125.

The Chair: This committee has been asked to look at environmental assessment, but normally our areas are education, community and social services and health; this is an unusual area for us to look at. It's from another examination in terms of children's services.

The meeting is adjourned until tomorrow morning in North Bay.

The committee adjourned at 1558.

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STANDING COMMITTEE ON SOCIAL DEVELOPMENT

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**In attendance / présents*

Substitutions present / Membres remplaçants présents:

Mr Doug Galt (Northumberland PC) for Mrs Johns
 Mr Dalton McGuinty (Ottawa South / -Sud L) for Mr Kennedy
 Mr R. Gary Stewart (Peterborough PC) for Mr Newman
 Mrs Lillian Ross (Hamilton West / -Ouest PC) for Mr Preston
 Mr Ed Doyle (Wentworth East / -Est) for Mr Smith
 Ms Marilyn Churley (Riverdale ND) for Mr Wildman

Clerk / Greffière: Ms Lynn Mellor

Staff / Personnel: Mr Ted Glenn, research officer, Legislative Research Service



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Official Report of Debates (Hansard)

Tuesday 13 August 1996

Journal des débats (Hansard)

Mardi 13 août 1996

Standing committee on social development

Comité permanent des affaires sociales

Environmental Assessment
and Consultation
Improvement Act, 1996

Loi de 1996 améliorant le processus
d'évaluation environnementale
et de consultation publique



Chair: Richard Patten
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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
SOCIAL DEVELOPMENTCOMITÉ PERMANENT DES
AFFAIRES SOCIALES

Tuesday 13 August 1996

Mardi 13 août 1996

The committee met at 1101 in the Best Western Hotel, North Bay.

ENVIRONMENTAL ASSESSMENT
AND CONSULTATION
IMPROVEMENT ACT, 1996LOI DE 1996 AMÉLIORANT LE PROCESSUS
D'ÉVALUATION ENVIRONNEMENTALE
ET DE CONSULTATION PUBLIQUE

Consideration of Bill 76, An Act to improve environmental protection, increase accountability and enshrine public consultation in the Environmental Assessment Act / Projet de loi 76, Loi visant à améliorer la protection de l'environnement, à accroître l'obligation de rendre des comptes et à intégrer la consultation publique à la Loi sur les évaluations environnementales.

NOTRE DEVELOPMENT CORP

The Chair (Mr Richard Patten): Let me say on behalf of the committee, it's a delight to be here in North Bay. I've been here several times. For some of us it's our first visit, and it will be too short because we'll be leaving this afternoon at about 5 o'clock.

I call the Notre Development Corp, president, Mr Gordon McGuinty, who is Dalton McGuinty's son. Welcome to the hearings, Mr McGuinty. For the record, that was a joke.

Mr Gordon McGuinty: I think it's very important you cleared that up early, Mr Chairman. I am Gordon McGuinty and I'm the president of the Notre Development Corp.

Ms Elizabeth Fournier: My name is Elizabeth Fournier. I'm the vice-president of Notre Development. I've managed Notre's public consultation since the project was introduced in 1990.

Ms Marlo Johnson: My name is Marlo Johnson. I'm the environmental assessment coordinator for Notre Development. By way of background, in my former life I was the manager of the environmental assessment hearings for the Ontario Waste Management Corp. I have over 10 years of experience with that EA process and that hearings process.

Mr Gordon McGuinty: Notre Development Corp is the owner of the Adams mine. It's a decommissioned open pit located near Kirkland Lake. Since 1989, we've been working towards getting the necessary environmental approvals to develop the site for receipt of Ontario-generated municipal solid waste, specifically waste from the greater Toronto area. Our company is also a member of the Ontario Waste Management Association,

which appeared before you last week in Toronto. In preparing this presentation we have reviewed a number of other submissions, including those by Metro Toronto, the Canadian Environmental Law Association, OWMA and the Ontario Municipal Association.

We believe our presentation today carries with it the force of a real-life situation and we urge you to give it the weight it deserves. The Ontario Waste Management Association was wrong when it stated to you that no private sector waste management company would entertain establishing a new landfill under the existing EA act or under this proposed Environmental Assessment and Consultation Improvement Act. Notre Development is in the final stages of preparing an environmental assessment, which we will submit to the minister in November 1996. We have a direct interest in the bill and it will have an immediate effect on our submission. And because we will no doubt be caught in the transition with the existing legislation, we believe our comments today should be considered by you carefully.

The bill is very complex, so we intend to focus on three areas only. We've chosen these because they are important to all concerned — proponents, regulators and the public. We've also chosen them because our real-life experience with them and the unique nature of our project will provide an important perspective to the committee. Specifically, we will comment on the proposed terms of reference document and why it is important to include public consultation objectives in it. We'll comment on the opportunities afforded by mediation and, lastly, on the importance of the minister's control over the approval process.

In closing, we urge the committee to ensure that, whatever changes are made to the existing process, priority be given to ensuring that the legislation does what it was originally designed to do: protect the Ontario environment and its residents in a responsible, self-sufficient and sustainable manner.

You've heard a range of positions about this bill. On one hand, the Canadian Environmental Law Association and others state that the proposed amendments will open the floodgates for new landfill approvals without due regard to the public or the environment. On the other end, organizations such as OWMA say that if their proposed amendments are not included in the bill no private sector development will take place in Ontario.

Reality is somewhere in between. We believe the bill provides the basic framework for establishing an efficient means of ensuring the Ontario environment is protected — if some important amendments are made. It will be up to the government and its staff to exercise their authority in a manner that does not force proponents into

rigid and overly restrictive process requirements such as occurred in the past.

We'd like to deal with the public consultation aspect of the terms of reference document. First, we'd like to comment on the need to prescribe mandatory public consultation in the legislation, and specifically a commitment to public consultation in that document.

Some background: Our proposal — rail-haul of municipal solid waste to a decommissioned open pit — may be one of the largest waste management projects in Ontario and over the years has generated some controversy. Since 1990, public consultation in all its forms has been not only a priority of our company but an absolute necessity. Let me tell you what we've learned.

Effective and ongoing public consultation during the planning and approvals process is, and must be, the responsibility of the proponent regardless of whether that undertaking is public or private sector. Two words are key here: "effective" and "ongoing." It is not enough to give lip-service to the need to communicate your objectives or to the need to receive input from the public who might be affected or who have an interest. To be effective, there must be a plan in place at the outset.

Notre has always had clear objectives for the public to understand and comment on. That is what the terms of reference document can accomplish. It provides a tool to remind the proponent of its commitment to consult throughout the decision-making process and it provides the public with guidance on its opportunities to input. The terms of reference document will ensure that consultation is ongoing.

It's very important that terms of reference document allow the proponent to design a consultation plan that is appropriate to the situation or the undertaking because each one is unique. We believe the bill provides that flexibility. For example, in January of this year, after Metro Toronto had conducted 12 months of public consultation in the north and \$3-million worth of technical studies, Notre decided to complete the EA process. Coupled with our own five years' presence in the local community, the foundation for our existing work was established. It helped us plan our additional technical work, but more important, it pointed to a public consultation program that gives priority to those likely to be affected. Because we are dealing with small populations and unorganized municipalities, these people were somewhat neglected in Metro's process.

We still, and will, encourage input from those who are concerned about the project but live many tens of kilometres away from it. Indeed, we've commissioned studies to ensure that we have technical data to alleviate all concerns. We're committed to open and forthright communication and the need to respond to all reasonable requests from the public. We believe our process is progressive and we believe it's working. We also believe it provides an example for what this bill, in the consultation aspect, might be trying to achieve.

It has been our experience that if a proponent is committed and ensures that ongoing and forthright communication occurs, and if a proponent is responsive to all reasonable requests from the public, credibility can be established. Fears and concerns can be alleviated and

an atmosphere of mutual trust can be established. Opposition to a project will always remain, but constructive working relationships can be established.

I would add, though, that regardless of the commitment by the proponent to consultation, environmental issues have a way of being distorted by the media. Often, opponents to a project get quoted by the press, without any regard for the truthfulness of their statements.

Environmental issues are also attractive to those who have their own political agenda. Unfortunately, even after millions of dollars are spent to test the environmental suitability of a site, some politicians feel free to intentionally misstate the facts.

We therefore propose a small addition, an amendment, to section 6.1 on the terms of reference. The wording right now states, "When preparing an environmental assessment, the proponent shall consult about the undertaking with such persons as may be interested." We're proposing an amendment that would add, "and those persons shall be prepared to participate reasonably."

Our reasoning is simple. We live in a world that requires upfront disclosure of issues, particularly ones that affect the environment. We're committed to that requirement, hence our support of the terms of reference document and the need to include mandatory public consultation in it. But if the proponent is prepared to consult openly and honestly, it only seems fair that there be some onus on the part of the public with whom it is trying to communicate to do the same. Without this amendment, the proposed requirement for mandatory consultation could be unfair.

1110

The addition of these words will encourage fuller and more constructive dialogue at the outset of the planning process, while not hindering in any way the ability of all parties to raise issues of concern. The benefit for the minister and the other regulators is the comfort that all issues have been raised at the outset.

I turn to mediation — we think this is a positive part of it — and the proposal that the minister be provided powers to refer parties and issues to mediation. It's a responsible initiative and one that, if included in the legislation, will encourage parties to use alternative dispute resolution measures of their own volition. Coupled with the amendment we proposed earlier requiring parties to consult reasonably, we believe that many matters can be resolved without having to go through a hearing process. In fact, in our own process, we believe we have an opportunity to commence a form of mediation with one group which has some technical concerns about our project. We believe it's our responsibility as a proponent to make our experts available to work with this group, but then also, it's their responsibility to make their experts available to us. If that happens, such an approach is far preferable to the adversarial atmosphere at our past public hearings.

The obligations of the minister and the ministry: We have a couple of comments on that, first on the obligation of the minister, the ministry staff and the Environmental Assessment Board to be bound by the terms of reference document, and you've heard this before from other proponents. If the proponent and the public are bound by

the terms of reference document, it is unreasonable to preserve for someone else the ability to change the scope partway through the process or, worse, at the end of the process, through argument at a hearing.

The proponent must know what the issues are. Very clearly, an example is in landfill issues. Everybody knows what those issues are going in. There isn't anything I can think about over the last 10 years that would not be put on the table up front. The proponent must know what they are and be given the opportunity to address them. The board must be bound by the terms of reference, otherwise there's no reason for the parties to consult with the proponent.

Notre has already heard from some members of the public that they will save their information for the "court case." I go back: This is not reasonable consultation. It's unacceptable to a proponent that is prepared to work diligently with the public in the first place to develop a terms of reference that satisfies all parties and the minister.

Providing the board with the latitude to hear argument on issues outside the terms of reference is counter-productive to the objectives of the bill, which we understand to be to streamline the process. Neither will it make the job of the ministry staff any easier if they cannot be sure of the parameters of their review responsibilities.

Along the same lines, the suggestion that a board's decision may stand regardless of whether parts of that decision are based on "matters not addressed in testimony at the hearing" is unacceptable. It undermines not only the public consultation process, but the hearing process itself. All parties must know the grounds upon which a board will make its decision. So we have some suggestions on those sections.

Second, we echo the comments of others who support the establishment of time restrictions and deadlines proposed in the bill. At a ministry briefing we attended, we were left with some uncertainty that the various ministries and agencies would in fact adhere to the suggested guidelines. It's of concern to Notre, for whom time is of the essence, that there's no mechanism to prompt or mandate decision-making. If the government truly intends to streamline the process, it's incumbent upon them to have competent staff within the ministries and to provide the staff with instructions not only to work with the proponent but have them have the authority to make decisions. It's been our experience that the staff are more than able to provide advice to the proponent. It's up to you to ensure that these staff resources are available and used to their best capacity.

Third, I will refer briefly to the need for harmonization of regulatory responsibilities. A proponent has a right to know early on in this planning process which legislation it must comply with and how the regulators plan to exercise their authority. You've heard others comment on the need for a private sector proponent to know the rules so it can make the business decisions. We urge you to work with your fellow provincial ministries and with the federal departments to arrive at a process that allows a proponent to proceed with some confidence.

This concludes my specific comments. Please consider that Notre is in the middle of a full environmental

assessment. We are a private sector operation and the costs of this process have been factored into that business decision. We believe the bill provides a good structure for improving the legislation, but the amendments we have suggested specifically with levelling the playing field and consultation must be seriously considered.

The final thing we would like to comment on is other factors that relate to your deliberations: the potential impact of the proposed changes on the Ontario environment and the public whose interest the legislation is intended to protect.

We do agree with one point made by the Ontario Waste Management Association in its presentation to you. This bill and the proposed landfill standards currently being considered by the ministry cannot be considered separately. If the uncertainty in the approvals process is not removed and the landfill standards as proposed are applied — I'm quoting what they said to this committee — "the legacy of this government will be that it chose to export waste to the United States as its preferred method of waste disposal." This is neither good government nor responsible environmental government.

Even in its amended form, when coupled with the proposed landfill standards this bill places a higher burden on landfill development in Ontario for both municipalities and the private sector than accessing existing landfill capacity in the United States. Approval costs will still take longer and will cost more and the landfill standards in Ontario will be more stringent.

We believe you have an obligation not only to improve this act but to ensure that Ontario is self-sufficient in its waste management capacity. You have an obligation to ensure that Ontario businesses and municipalities have an opportunity to take advantage of potential revenues from waste management rather than exporting investment to the United States and destroying an Ontario solid waste management industry.

Notre is playing by Ontario rules and will continue to do so. We're committed to an in-Ontario waste management system; we have been since 1989. We're committed to this working in Ontario and we're committed to the rules that you establish for the environment of Ontario. But this government has to demonstrate the same type of commitment. You need policies that are in place to encourage landfilling of municipal solid waste in Ontario and you must exercise your authority to administer these policies in a manner that discourages export to the United States. You must create a level playing field for Ontario companies, municipalities, consultants and the high degree of technical ability that we have here in Ontario.

I thank you for the opportunity to speak. We'd be happy, all three of us, to answer any question.

The Chair: Thank you very much, Mr McGuinty. We will begin the questioning this morning with Mr McGuinty.

Mr Gordon McGuinty: That certainly seems reasonable.

The Chair: You have about four and a half minutes, each caucus.

Mr Dalton McGuinty (Ottawa South): As you duly noted, the deputant and myself share the same name, but

he has much beyond that to commend himself to this committee.

Gordon, first of all thank you for the presentation. I know you put a lot of work into it. There are a number of things I'd like to raise. You make a compelling argument to the effect that consultation is not an obstacle to be overcome really, it's an integral part of a process, and any proponent ought to engage in active and ongoing consultation. The argument that's been made time and time again by environmental groups in particular is that an important element in consultation is not required here, and that is with respect to the preparation of terms of reference themselves. I wonder if you might comment on that.

Mr Gordon McGuinty: Our understanding of this bill is this will make the pre-consultation aspect of the terms of reference mandatory, and we support that. We think, based on our experience, that would play a critical role. That places a lot of onus on a proponent that you have to spend a lot of time then, as we see it, on the upfront manner. But if you do that, we think the process will work better as you work your way through it. Marlo, you had an experience that may relate to that.

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Ms Johnson: Yes. I'd understood the question somewhat differently, but I'll take it from there. The prospect of a hearings process at the end of a consultation process casts a long shadow on what the proponent is trying to achieve. In an earlier hearing process I was involved in for some three and a half years, the proponent was trying to negotiate with the site community on a without-prejudice basis to determine what potential benefits that community could receive should the project go ahead, so in no way asking the site community to agree that the project was acceptable but trying to determine what kind of benefits they might be able to obtain for themselves.

The hearing board was interested in that too and eventually, three years into the hearings process, the chairman of the hearing panel directed the site community to go away and negotiate with the Ontario Waste Management Corp, so that the hearing panel knew what the net effects were of the project in the end.

Mr Dalton McGuinty: I'm not sure if I was clear in terms of my question. There's an obligation in the amendments here that's placed upon a proponent to consult with respect to the preparation of an environmental assessment, and that's something that's distinct from the terms of reference. There's no obligation placed on a proponent to consult with respect to the preparation of the terms of reference — no obligation found in Bill 76. My question, Gordon, is, would you object to such an obligation being imposed upon a proponent?

Mr Gordon McGuinty: No, we wouldn't object to that obligation. We firmly believe, and I repeat myself, that it is the responsibility of the proponent to very clearly lay out as early as possible where they intend to go. I think our experience, although as you well know it's a day-to-day thing on the issues — if you can maintain the clarity and you can establish what you're going to do very early, it actually is of big assistance to both our public consultation process and the ability for people who either may want to have input, may want to oppose — as

I have this terminology, at least we all get the rules straight, and the earlier we can get them straight and all become involved, the better the process is.

Mr Dalton McGuinty: There have been some significant cuts made to the ministry recently in terms of dollars and staff and I'm just wondering, based on your experience, Gord, or your colleagues', whether they might conclude that this might lead to problems. I see Bill 76 as imposing greater responsibilities on the environmental assessment branch. They're going to have some deadlines now they're going to have to meet. They're going to have to be able to respond to applications as they come in. Are they going to have some difficulties meeting those obligations now as a result of cutbacks?

Mr Gordon McGuinty: That question was brought up at this workshop that over 300 people attended. It's conceivable. I think my response to that, though, is what I've seen dealing with the ministries over the last few years is they have competent people there. There's been a lack of the ability to have perhaps clear guidelines for them to be able to make decisions, so as a result things keep getting dragged out. I think, from a proponent's point of view, we would much sooner have a decision than no decision or somebody deciding, "We'll get back to you in 90 days or 120 days." I think guidelines that are there and the time frames would be of benefit to the ministry staff to be able to make some decision. Your question may have some merit in terms of whether the staffing will be there, but if the guidelines are there in a pure business sense, somebody is telling them to make a decision and that will clear up a lot of the problems we have.

Ms Marilyn Churley (Riverdale): I'm glad to hear you've somewhat disassociated yourselves from the Ontario Waste Management Association. Even though you've had major beefs with our government, the NDP government, in the past, I take it that you're willing to answer my questions today. I thought I'd get that on.

Mr Gordon McGuinty: If I may say, I thought it was an inappropriate response to your question.

Ms Churley: I thought so too. However, I do have a question to ask, because of course we're not here to talk today about our waste management philosophies; we're here to talk about this new bill. I'm glad you support full public consultation at the terms of reference process. That's really good to hear and very important. Then on page 5 you talk about how these terms of reference should be binding.

I would like to ask you, therefore, if the terms of reference are negotiated with full public participation, and if your position is then those should be the terms of reference — as you well know, these kinds of issues are very complex and things can crop up. I'm very concerned that, for instance, now a proponent can sit down and negotiate with the government and get alternatives to the site, get all of those things that are the heart, in my view, of an EA, off the table. It's arbitrary now to some extent. It's not necessarily going to be a full EA. Would you not say, therefore, that it'd be really important, particularly if you can't change the terms of reference later, that you look at everything at the beginning of the process so that later on you don't have a big shemozzle because some-

body shows that something very, very important in terms of, say, environmental planning has been left out of that?

Mr Gordon McGuinty: As I read the intent of the terms of reference, it is to do some scoping on some of the issues that you have brought up in terms of alternatives to, and whatever. This is a critical thing to have happen. I'll use an example. Alternatives to: We made an environmental decision to buy a site at the Adams mine. We will very clearly show why we made that environmental decision. The alternatives to that site will be to let the pits fill up with water and do nothing, to reopen a mine, and we would be quite prepared to address those things. Siting an incinerator at the Adams mine and rail-hauling waste to it is not an alternative we should bother spending any time on because you could clearly, in the terms of reference discussion, rule that out on both cost factors and whatever. So I think the terms of reference can scope a lot of things.

To try to address your question about would things come up later that we would not have been aware of, in landfill siting, as I said earlier, I can't think of anything that people concerned about a project wouldn't put on the table up front. Now, obviously you move forward and you do your technical work, which is all part of an EPA approval. If something comes back that technically is no good, the system is there within the ministries and whatever to make sure that's addressed and handled anyway. I can't speak for other types of environmental projects, but certainly for landfill projects I can't think of anything that wouldn't get on the table early for discussion and be resolved in those terms of reference. I'm not discounting what you're saying, but I can't see it at the moment.

The Chair: Thank you, Ms Churley. Time is up. We have three members who would like to pose questions, so I will read them in order: Mr Pettit, Mrs Ecker and Mrs Munro. If you want to share your time, you have four and a half minutes.

Mr Trevor Pettit (Hamilton Mountain): Thank you, Mr McGuinty and ladies. You've obviously been very close to the EA process over the last little while, so I think both your laurels and your darts are well taken. As you undoubtedly —

Failure of sound system.

Mr Gordon McGuinty: — environmental protection, because what we're looking at in Bill 76 is really part of a planning process. It goes hand in hand with the EPA, which is really delving into the technical issues that we have to satisfy anyway. I don't think, in terms of environmental credibility or a proponent having to site a landfill — as I said, I have some serious problem with your landfill standards that you're proposing here. You've got a situation there where a proponent like us — we've come back and our consultants say there is "the potential" for a 100-year contaminating lifespan on our site — potential. It doesn't say it's there, but the potential. We have to negotiate with your government or your ministry long-term, perpetual care for 100 years, a formula to put that money in a trust fund to protect the environment and we have to back-charge that to our customer in Metro Toronto. The US has a 30-year period under EPA standards, so I don't think Bill 76 touches the ability or

the need for environmental standards to be protected. I think you're addressing here a planning process as much as anything.

Mrs Janet Ecker (Durham West): Thank you very much, Mr McGuinty, for your excellent presentation. You've made some very good points that will be quite helpful and useful. The only thing that you didn't deal with was the issue of a transition, if you will. If this legislation goes through in this form or some similar form, what kinds of issues do you think should be addressed for the transition? Are there any particular specific requirements or time lines or anything of that type of advice that you could see from your current experience as a proponent?

Mr Gordon McGuinty: I think there's an important issue that the ministry's going to have to deal with. Our position is we entered into this environmental assessment process. We can satisfy the existing process if we have to. We intend to file our documentation in November and it'll be dealt with.

I do think, though, that this is something the ministry probably is going to have to deal with on a case by case basis. A municipality's application and where it is in the process is probably different than where we are in the process. It is my understanding that once these hearings are done and there's some resolution, the ministry intends to meet with proponents to discuss how they can move forward. That's very critical and I think there has to be some flexibility, because with all due respect to the previous government, we can't have draconian changes in philosophy that require people to start over again. That just can't happen.

Mrs Julia Munro (Durham-York): Thank you for the presentation. You have actually alluded to my question. I want to ask you about the question of environmental standards. We had a number of people appear before this committee who talked about how American situations were significantly further ahead than they are in Ontario in terms of environmental standards. I really was looking for a comment when you made reference in your presentation that the proposed landfill standards would in fact be more stringent. I wonder if you could comment on this whole comparison issue, because you also referred to the fact that Ontario should have its own waste management and not export to the US.

Mr Gordon McGuinty: The important thing to understand is that the federal government in the US changed the landfill standards a number of years ago, and although there have been some extensions, they have it pretty well standard across the country that if you meet this expectation, you're going to get a licence. In Ontario we have to recognize, and I certainly do recognize, that a community in northern Ontario cannot be asked to put in liners, leachate collection plants and do those types of things that a large landfill like we're proposing and moving forward would have to do, so we have to have flexibility in our standards. But in our situation, where we're looking at a landfill that would probably be the most progressive in the province of Ontario and you relate what we have to go through to get an approval, I have no question in saying that the standards we have to meet will be more onerous than US landfills you could access in Michigan or Ohio today.

To go back to the final thing, and I know our time's running out, I'm not advocating the closure of the border to the private sector or anything, but the reality is that if there is not some movement — the issue is Metro Toronto talking about shipping its garbage to the US — and if there is not some understanding by all parts of the government and the Legislature that you can put — you can change this act and you can put big landfill standards in place, but what it then takes to have that environmental security put in the ground, either by a private sector or a municipality, is the tonnage flowing to the landfill. If it's not there, nobody will develop a landfill.

On municipal solid waste, the key thing right now is that 80% of the ICI is going across the border today anyway — market flows. If we're in a situation where municipalities are allowed to opt out of the environmental assessment process and just take their waste across the border, all these hearings don't mean anything, your landfill standards don't mean anything, because nobody's ever going to develop one and we'll be totally reliant on cross-border shipping. I don't think that's a responsible thing for this government or anybody on this committee to look at. There needs to be some thought in your final bill on some of those areas.

The Chair: Time has gone on. I want to thank Ms Fournier and Ms Johnson, as well, for sharing your views with us. On behalf of the committee, thank you very much.

There is a technical difficulty. The technicians would like five minutes to have their equipment up and running, so we'll take a five-minute break to hopefully allow them to fix it. Your mikes aren't on, on this side, so they can't record.

The committee recessed from 1135 to 1141.

RICHARD DENTON

The Chair: Richard Denton, welcome to our hearings. You have 30 minutes, and whatever time is remaining from your presentation is distributed between the three parties for questions for you. Thank you for coming. Please begin.

Dr Richard Denton: Thank you very much for this opportunity. I come before you as a fellow politician. I'm a municipal councillor up in Kirkland Lake, having received the most votes at election time, but I'm not presenting on behalf of council but as a concerned colleague. I'm also a medical doctor and I'm concerned with protecting the health of my patients. By protecting the environment, I believe we can protect the health of Ontario citizens. That is why I'm here.

We all know that some of the people can be fooled all of the time, some of the people some of the time, but you can't fool all of the people all of the time. I believe this is what this Bill 76 purports to do. It is An Act to improve environmental protection, increase accountability and enshrine public consultation in the Environmental Assessment Act. Unfortunately, I feel it does not do this. I should now show you why it does not protect the environment.

Let's start with the explanatory notes, "Changes to the approval process." First, the proponent submits the "terms of reference" that will govern the preparation of

the environmental assessment." You and I, as elected officials, I believe should determine policy and monitor it. Our civil servants should draw up policy and monitor it. Business should work within those guidelines. Here, you are giving industry the power to write their own ticket and this does not make common sense. The minister, under the regulations laid down in the act I believe should determine the terms of reference. Therefore, this should be amended.

The terms of reference should meet the environmental assessment process, namely, looking into alternatives to and alternative methods to the proposal. The proponent must fit the environmental assessment, not the other way around, as this act will do. Again I quote, "If the minister approves the proposed terms of reference, the environmental assessment must comply with them." I believe this is all backwards. It is not common sense. The terms of reference must comply with the environmental assessment.

Let me illustrate this with an example. As you have just heard, Toronto is looking for a place to put its garbage and one such place is the Adams mine, a short distance from Kirkland Lake. The proponent, in his terms of reference, limited his reports to an approximately 5-kilometre radius. It was only with public consultation with area farmers who knew of the existence of an underground body of water called the Munro Esker — the need to look further afield should be included in the terms of reference. Therefore, I certainly agree with Mr Dalton McGuinty that the public should be consulted about the terms of reference. I also agree with Ms Churley that everything should be looked at in the terms of reference.

Interested persons: Next, "The proponent will be required to consult with interested persons when preparing the environmental assessment." This sounds good, but what does it really mean? Again, let me give you an example that I'm well aware of. Last year, Metro held public liaison committee hearings into the Adams mine where all sides of the issue were raised. This year the proponent has selected "interested persons" who are all in favour of his proposal. This is not public consultation, and the public can see through this ploy. "Interested persons" needs to be replaced with the words "public consultation," reflecting all views.

Most Canadians believe in democracy. History has shown that when people are not listened to there are demonstrations, rebellions and revolutions. You folks certainly know that first hand with what happened at the opening of the throne speech. We have seen dynamite used to blast a hole in the road leading to the Adams mine up in our part of the country. You must allow public consultation.

Intervenor funding: Public intervenor funding is one way to allow this meaningful public consultation. An individual or even a group of, say, farmers does not have the resources of a proponent who is going to make millions from a project. It is the classic David and Goliath. The public needs access to the tools to create a level playing field. Intervenor funding up front makes this happen. This should therefore be put into the act, and the mechanism for it to occur.

Deadlines: I believe that these are a good idea but that they need to be realistic. I believe 28 days, the shortest month in the year, is not adequate for public input. Time lines, though, are great for civil servants. I would amend the times for public input to be at least two months each for a discussion of the terms of reference if the proponent makes it, but I suggest that the terms of reference would be better served if the minister followed the EA guidelines. Also, we certainly need at least two months for the final public comment period.

I quote from government documents. "The act would be amended to increase timeliness, decrease costs, and provide certainty for environmental assessment stakeholders in Ontario." Certainly this Bill 76 is doing that to the detriment of improving environmental protection, increasing accountability and enshrining public consultation. Deadlines are well and good but must be realistic to allow public consultation and not fast-tracking a proponent's plan to the detriment of the environment.

Ministerial powers: another concern that the environment is not being protected is in the sweeping powers that the minister is able to wield. In the context of landfills, the minister may approve EA documents that don't address alternatives such as the 3Rs of reduce, reuse and recycle or different landfill sites. The ability of the minister to grant exemptions from the act is to the detriment of the environment.

Canadians have a respect for the law but will throw out elected officials who are arrogant. I would argue that it was arrogance that brought down Trudeau, and provincially Peterson. We politicians need protection from ourselves at times. I think it was Pogo who said, "We has met the enemy, and it is us." Thus, do not give the minister these sweeping powers of exemption.

Mediation: Again for the public to be informed, mediation should be open to the public unless mediators decide otherwise. I think the wording just needs to be reversed there. Mediation should be available at every stage of the EA process, including EA hearings, terms of reference, class EAs etc. Participant funding should occur to enshrine public participation.

Changes affecting the Environmental Assessment Board: As I have said before, politicians should determine policy and civil servants should carry it out. Likewise, boards should be made up of disinterested people, I believe, and not civil servants. I think civil servants are there to advise but they are not to rule on decisions. Public servants have a long history of being neutral, of not taking sides. I can think of my own father, who was a civil servant, and he would never even put up a sign on his lawn at election time for just that reason. I don't believe we should be putting civil servants in that untenable situation.

1150

Likewise, the minister should not be able to specify or limit the board. The board needs free rein to do its job; this is, as above, not allowing the minister to become dictatorial but must follow due process for all cases before the board.

Other amendments: Certainly common sense would state that we don't need two sets of laws, federal and provincial, regulating the same thing. I think we're all in

agreement with harmonization of these two levels of government. I believe they should be merged now in this act, specifying when to follow provincial rules and when to follow federal. Leaving in words like "equivalency" may be too broad for the minister to exempt the EA, and the environment may suffer. I believe the rules should be put in the act rather than leaving them to the discretion of the minister.

In summary, I applaud you and the government for trying to improve the act. I am in total agreement with improving environmental protection, increasing accountability and enshrining public consultation, but at present this act does that only in the title and not in the body. Rework the act to enshrine public consultation with the tools of intervenor funding; allow more time for the public to respond; stipulate many ways in which proposals are made public; limit the power of the minister, to prevent dictatorial powers; have the minister, as regulated by the act, define these terms of reference with public consultation; look at all the alternatives to choose what is best for the environment.

We have seen laws from the previous government overturned by the present government. This does not lead to certainty and predictability. I believe we should work to make this a fair and just bill that will last and truly protect the environment, increase accountability and enshrine public consultation. Thank you very much for this opportunity to address you.

Ms Churley: I appreciate your presentation. We're getting different views from proponents and community citizens and environmental groups, which to me is predictable, although there are some proponents who would like the bill to go even further in terms of, in my view, shutting out the public. You have done a very good job of identifying most of the problem areas. There are a few things like class EAs and other areas with some problems, but I think you've hit the major ones.

The reality is that if this bill goes through as it is, Mike Harris will have broken his promise to require a full EA for landfill. Would you agree with that?

Dr Denton: Correct, definitely.

Ms Churley: This is an opportunity to make the necessary amendments. The government can come back and say, "We can fix that," by making these amendments. I want to come back to that very important point because right now, under the terms of reference, looking at alternatives, need, alternatives to the site, all that can be negotiated off the table, which means that a landfill could go through without due process.

Would it make a big difference to you if there were public consultation, in your definition of that, up front during those negotiations around the terms of reference? And my second question is, what good is public consultation, especially in very complex situations, with no intervenor funding?

Dr Denton: I agree with you fully that you need the public consultation up front to determine those terms of reference. I think my case example pointed out that the common sense of citizens pointed out deficits in the terms of reference as proposed by the proponent. I think having that public consultation up front will eliminate problems down the road and give more predictability to the process and help with the time lines.

Public intervenor funding is very important. The public can use their common sense in terms of determining the points of reference, but when you get to a technical study you need the experts. I can use the example of last year. When Metro looked at this, they paid for experts from both sides of the point of view. They paid for experts chosen by the proponent and they paid for experts chosen by the opponent and many things came to light as a result of that process. I think you're very right that intervenor funding up front is extremely important in levelling the playing field to allow the public to have their say.

Ms Churley: On the discretionary powers given to the minister, I'd like to hear your comments on the issue around certainty. The proponents who speak to us say they want certainty in the process. In this process it's so arbitrary. Do you think that's going to help speed up the system when it could be one set of rules for one proponent and a different set for another proponent on the same kind of issue?

Dr Denton: That is a very important point, because I think what you're saying, Ms Churley, is that there is unpredictability as a result of that. Therefore, I think the act should stipulate what the rules are right up front and not leave it to the discretion of the minister. That will create that predictability, that certainty, and then everybody knows by what rules they are playing. As I said in harmonization between federal and provincial, put those rules — what is going to apply provincially, what is going to apply federally — in the act, and when a proponent comes to make his case he knows what the rules are and that he's faced with one set of rules, not two.

Mr Doug Galt (Northumberland): Thank you, Dr Denton, for a very thoughtful presentation. Although it's not agreeing exactly with the design we're putting forward, I appreciate your thoughts. There's no question, listening to the various delegations, whether they're opposed to or some in favour of what we're doing, that they're telling us the system is broken. I expect you would agree with that, as you're nodding your head.

This is our design for full environmental assessment. I want to assure you that we are following up on that commitment and that there will be, with this bill, a full environmental assessment.

The areas where I was running into problems, and I think you'll agree, are the cost of where we're at with the broken system and with the time. We can talk about Wellington-Guelph, some \$4 million; we can talk about Northumberland county, where I'm from, \$2 million, no decision made. I can go along the list. We can talk about Kingston, 12 years in time, no decision made; Peterborough with 10 years, no decision made.

Having agreed that the system is broken, how would you have gone about designing a bill to get more certainty into it? What kind of things would you recommend that we should be doing?

1200

Dr Denton: I think many of the things I've just talked about would do that. I'm in agreement with many of the things that are in this bill. I'm in agreement with the time lines, but the public needs greater time to have input. Putting all the regulations in the act as opposed to leaving them up to the minister will create more certainty for the

proponent. Allowing the public to have their say in determining the terms of reference will get much of the heat out of the way right at the start. Then things can move very quickly towards a settlement at the end. I think we can reduce the cost, reduce the unpredictability and speed up the process by those things.

Mr R. Gary Stewart (Peterborough): I want to go on a little bit on the time lines situation. As I read your proposal, it appears to me that you don't feel the public is having any input into Bill 76. I guess my concern is — and I can talk of landfill — the fact that the public didn't have any real input into the criteria under the previous bill. I think in this particular one we are giving them as much as possible.

When you're talking about extending time lines, that concerns me a lot, because you as a municipal politician know — and I'm sure you've got very involved — of environmental issues that seem to go on and on. Do you agree that we should have time lines, or are you suggesting that we should have them but they should be extended a little bit, or should there be an appeal process if somebody can't meet those guidelines?

Dr Denton: I think there should be time lines; I'm in agreement with that. When it involves the public, you need more leeway. The pendulum has swung from open-ended to basically being closed-ended and fast-tracked, and it needs to swing back into the middle. Increasing the time lines for public consultation will do that, strike that middle ground. I'm in agreement with the current time lines in terms of the civil servants, because that tends to be fairly technical and therefore can be done in an organized manner. I am in agreement with time lines, but I feel you have to allow the public a greater amount of time. It's hard, particularly up here in the north where you've got huge areas, for the public to get together, to organize and to get their cases and bring in the experts and all that sort of thing.

Mrs Ecker: I wasn't clear on your reference to the terms of reference. It sounded like you were saying that the terms of reference for each project should be laid out by regulation, which caused me some concern because my understanding is that terms of reference are to be designed for the particular project to reflect the local community problems etc.

Dr Denton: The guidelines for those terms of reference should be laid out in the act. They should cover all the various alternatives to the proposal. Alternative methods should be laid out in the act. The terms of reference should be discussed by the public and open for the public. I believe they should not be basically written by the proponent and then passed by the minister, which would limit any further discussion down the road.

Mr Dalton McGuinty: Thank you very much, Dr Denton, for your presentation and for the effort you made to appear before the committee today; I understand you had to travel some distance. I'm sure I speak on behalf of all committee members when I say we appreciate that effort.

You talked about the importance of public consultation, particularly with respect to the terms of reference. The minister is proposing that she fulfil that obligation or that purpose by posting the proposed terms of reference on the Environmental Bill of Rights registry. I'm just

wondering, in practical terms, how helpful do you think that would be?

Dr Denton: It sounds great, but I would say that it's ahead of its time. Very few people have access to the Internet and electronic means. While it is now available in libraries, and people have been to our library for the municipal opening and we've had them speak at our municipal association about how it's going to be publicly accessible, I think you still need, in this day and age, to go back to newspapers and radio as opposed to just putting it on a registry. If I'm understanding your question correctly, putting it on an electronic bulletin board registry is not adequate. It's got to go to newspapers, it's got to be posted, being talked about on the radio, so that the public is aware of what's happening.

Mr Dalton McGuinty: Right. I agree entirely. I think it was a representative from the Canadian Environmental Law Association who told us that notice made by way of the Environmental Bill of Rights registry is considered to be kind of the absolute minimum. I read something the other day that said we've achieved our maximum penetration rate for the time being in terms of personal computers in Ontario households; only 30% have them. I'm not sure what percentage of those are on the Internet.

Dr Denton: Very few.

Mr Dalton McGuinty: I just don't believe it will be an acceptable or a real, genuine intent or effort to ensure there's public consultation.

Dr Denton: I couldn't agree with you more.

Mr Dalton McGuinty: A previous deputant, Gordon McGuinty, raised something that I think all of us ought to pay some attention to. We're trying to strike a balance here. I don't want, if it's at all possible, Ontario waste being shipped outside of our province. If we end up with the best possible environmental protective measures, but yet none of our waste is being treated and dealt with here, we might be able to look at ourselves in the mirror and say, "We've done a fine and outstanding job," but we're kidding ourselves if the waste we're now producing in this province is not going to be dealt with here by us. That's on the one hand. On the other hand, I don't want regulations to be so lax that we're not properly fulfilling our obligation to future generations in terms of the environment. I don't really have a question, but you may want to comment on that.

Dr Denton: Yes. I believe we should look after our own waste within our own province. I think the way you do that is by going to the 3Rs. By keeping it near the source, you keep people cognizant that they are responsible for their own waste. Therefore, waste disposal needs to be looked after locally, and by doing so you will implement the 3Rs for that process to reduce the waste. By having a good EA act, you can prevent degradation of the environment.

The Chair: Dr Denton, thank you kindly for joining us today and appearing before us and sharing your views. We appreciate it very much.

TEMISKAMING GREENS

The Chair: We have the Temiskaming Greens organization, Mr Doug Fraser, president. Mr Fraser, welcome to the hearings.

Mr Doug Fraser: Thank you very much. I'd like to first take the opportunity to thank the committee for having this opportunity to speak and for coming fairly close to home so we don't have a terribly long ways to travel. Two hours for us is seems pretty nearby compared to what we sometimes have to do.

We have a number of similar concerns that have been raised, I'm sure, many times about proposed Bill 76. I suppose our biggest concern, the real emphasis is the failure of the bill to guarantee a full examination of alternatives to the undertaking and alternative methods for an undertaking, such as a landfill. I guess the emphasis in North Bay among speakers will be undertakings such as large-scale landfills.

The bill fails to guarantee full examination of all impacts — biophysical, social and cultural — which result from the undertaking or alternatives. Again, that's because of this opportunity for exemptions and the discretion of the minister.

It fails to require and provide intervenor funding, which we feel is critical to public participation in a fair and thorough way.

1210

I'm a high school teacher and so everything I do is like a lab or a demonstration. It's very important when you consider an example such as a landfill to try and personalize it and realize exactly what we're talking about. I brought a little garbage bag here, something you might find under your kitchen counter. I didn't bring garbage; I brought — well, no, I suppose in some ways it is garbage. It's waste paper. I'll just make this look like a garbage bag. I recycle all my paper, so you'd never find this in my garbage bag.

That's the kind of thing I pull out from my kitchen sink a couple of times a week. We're pretty good; we don't have very many of these that go out each week. That's how we relate to garbage, and when we relate to landfills we think about our little bag that we carry out and put at the end of the driveway. It was sitting under our sink. It seemed pretty safe. I mean, how bad can it be? We know there's a lot of people doing it, but we have this impression that it's not particularly hazardous stuff. How big of a problem can it be? Sure, nobody wants it in their backyard, but what's the big kerfuffle all about?

I think everyone would admit that they don't like leaving that festering under the kitchen sink for too long, and when they pull it out, if there's a little leak there and they look at the little dribbles in the bottom, their tendency is to want to wash that out and not touch it. There is a little bit of personal awareness.

But in scale — I posed a few questions here; it's actually on the last page of the little thing I gave you — how much garbage is being considered? If we look at the example of the Adams mine site, the question I really want you to ask yourselves is, is it even conceivable that a major landfill project could ever be worthy of being exempted from the most thorough examination of alternatives and environmental risks and that sort of thing?

If we use the Adams mine proposal as an example, how much waste is being considered? It's about a billion kilograms a year. Actually, in light of the government of

the day, I've picked very conservative numbers in my estimates because — I do this in my science class — I certainly don't like to exaggerate. Reality is often scary enough. We're looking at a billion kilograms a year that would go into the Adams mine. A little garbage bag might weigh a kilogram, it might weigh two kilograms, but we're looking at tossing a billion of these little kitchen garbage bags into the same hole in the ground for 20 years or more, and certainly the length of the site — I'm sure Notre would hope that it would last much more than 20 years at a billion kilograms a year.

How does that compare to your kitchen garbage? We take those garbage bags out and there are maybe 70 million garbage bags a year. If we look at bigger garbage bags, and if you put those into garbage cans, because we carry those little garbage cans out to the laneway, and if we took those garbage cans and we just piled them up to see how big a pile, it would take quite a while to pile them up and I'm sure they would fall over, but one year's worth of garbage would make a pile of garbage cans 100,000 kilometres high.

It's a lot of garbage. It's just this stuff, but we're talking about an amazing amount of it. We think of it as not very hazardous, and we know some of it is hazardous. I don't know what gets thrown in there. It's a very odd concoction. There might be an old acetate magic marker in there. There might be an old calculator with a mercury battery in there. There's hazardous waste that goes in there that won't be sorted, won't be taken to hazardous waste depots, and I suggest that perhaps it's half of one per cent. I think in recent years it's been higher than that. In the future, who knows, but I think one half of one per cent is a reasonable thing to go on.

I'll tell you that when we had our supposedly public discussions with Metro, one of the questions I asked early on and asked repeatedly was for them to tell us what the mix would be, what they expected we'd be getting in the garbage. They wouldn't tell us. So unfortunately I have to use my judgement and information from sources — the Recycling Council of Ontario, that sort of thing — about these estimates.

If it's only one half of one per cent hazardous, we would be dumping 14,000 kilograms of hazardous waste every day into the Adams mine pit. If there was a spill of 14,000 kilograms of hazardous waste into somebody's groundwater, on the surface, spewn into the air, dumped on the land, in the water, I would assume that would be a news story and certainly worthy of significant consideration by the MOEE. That's what we're talking about: 14,000 kilograms a day. That's five million kilograms a year being placed in one site. Certainly it's mixed up with all kinds of other stuff, but the bottom line is, that's the amount of hazardous waste we're talking about. So for the life of the site, a proposed 20-year life, that would be 100 million kilograms of hazardous material.

When it comes to other kinds of waste that the public is generally concerned about — and I'm no expert — human sewage, human faeces, this particular site would receive about a quarter of a million soiled, dirty diapers every day. Again, how serious is that? How serious is it in a pit, the majority of which is below the level of groundwater, that you throw a quarter of a million

diapers with human faeces in there every day? It's a lot, and certainly to exempt any part of an assessment hearing that would examine carefully that kind of situation I think is not common sense. Coming from a government that presumably believes in and acts in a commonsense way, I think it would be inconceivable to consider any exemptions or omissions from a full EA when it came to that kind of proposal, and that's exactly what the proposal is, except slightly larger in scale maybe.

It's very important that we look at alternatives. One of the things that always hits me when I hear a presentation from Mr McGuinty or similar proponents about incinerators is the sort of state-of-the-art, cutting-edge technology kind of vision that they portray. They have cutting-edge audiovisual equipment and they put on nice displays and that sort of thing, but they're usually talking about either landfills or incinerators.

If we go back a few years kind of to Neandertal man, this is about all the garbage they had, these things, because they had a devil of a time eating them and you only needed so many to club your buddy over the head and you chucked the other ones. "Out of sight, out of mind" was popular back then, because you don't want to have too many of these cluttering up the cave door entrance. So you turfed them over a little hill. That wasn't so bad because these are non-toxic and there weren't that many people. They didn't catch too many mammoths — the odd one got stepped on — and so it wasn't a problem: Out of sight, out of mind. If you saw Quest for Fire, you know we discovered fire, found fire, and started to control fire. There's getting to be a bit of litter around, so we started just turfing these into the fire pit. So we started incinerating them. That predates 100,000 years, but let's say that's around that 100,000 years ago mark.

What's changed in our modern waste management technology? We have way more garbage and it's hazardous to our health. So the technology involves liners, leachate collection treatment systems, gas collection treatment systems, because it's dangerous. The whole idea of actually taking the waste and throwing it into a hole in the ground and covering it up, that's the same idea. We've gone nowhere. That's not waste management; that's just like waste movement and tucking away. 1220

Certainly there have got to be some alternatives with our society, and incineration's the same sort of thing. Now I suppose Mr McGuinty's suggesting we have to add the technology of transportation, because out of sight, out of mind has to be really far away to not upset the largest number of people.

I think we have to pursue real alternatives. The real alternatives should be sustainable alternatives. When we talk about a landfill, when the crunch comes, should it be in the United States or should it be in Ontario, and how do we feel about that, those aren't sustainable alternatives anyway. Those are failures of us to manage waste. If we admit failure, then I suppose one of those two things may happen, but we have to seek real alternatives, and that can be found in the 3Rs and in modern technology, much more creative technology.

Intervenor funding is extremely important. The environmental registry method — you need people in communities to get together, what the Americans are doing now, I suppose, in these town hall meetings. That's the big buzz in the US. Neighbours want to get together and talk to neighbours and support each other and bounce ideas off each other. They don't want to go into a library and open a binder and see a copy of Bill 76, because they don't understand it, but they want to be involved. They want to be able to hire an expert of their choice. If you ask members who have sat on panels from environmental assessment hearings if the expert witnesses brought forth by the public have provided important peer review — technical, scientific review — and if they've been valuable, I think the answer will be an overwhelming yes. So there's a long history of evidence of that.

I know it costs money. If it's a level playing field and we believe in corporations sort of having a fair kick at the cat, then they should be able to fund a full assessment of their project and they should pay proponent funding. When we're cutting more and more money from government spending and government agencies, if you don't want the responsibility to be on the MOEE, why shouldn't it be on the companies? They're the ones that are putting forth the proposals, and they're all profitable proposals. We're talking about proposals involving billions of dollars. If the concern is that it costs \$4 million for a hearing — that's the scale of these particular things that we're talking about — I don't think that's an unreasonable amount of money. Savings can be made. If we have fewer lawyers and more experts at these sort of quasi-judicial meetings, it might save some money, but I don't have expertise in that. I know the public needs the funding.

Those are the main points I wanted to make. There are far more expert people who can make detailed submissions about the wording of the bill. We support Northwatch's submissions, and the Canadian Environmental Law Association we believe has a very thorough group of proposals for actual amendments to the bill that would meet our desires.

Mr Galt: Thank you, Mr Fraser, for a thoughtful presentation and your demonstration on concentration of garbage. There's no question that's probably the number one problem, the volume coming into a spot and then the possibility or concern of leachate occurring in that particular area. Ideally, it would be great if we could recycle, reuse in some manner everything. That would be ideal and we wouldn't need landfill sites. Maybe some day we'll arrive at that, but we're not quite there yet.

I want to assure you with the process in Bill 76 that full environmental assessment will occur with the terms of reference being developed and the public consultation that will be occurring.

Moving to a question that I have for you, it has to do with your first page, after 1, 2 and 3. It says Bill 76 places too much discretionary power in the hands of the politicians. I gather you're referring to the minister and decision-making power that the minister, backed by cabinet, would have. There are really only two changes where the minister and/or cabinet would get involved, and that relates to the approving of the terms of reference

and also looking at harmonization with the federal environmental assessment. Where would you take this out? How would you go about reducing the political powers and at what point would you do that in this process as it's in the present Environmental Assessment Act or in this bill?

Mr Fraser: For example, in the terms of reference, if you can cut out looking at alternatives, those kinds of things — very early on, your terms of reference, that's what dictates the scope of the EA. So if I have the power to determine what the scope of the EA is, I don't know how you can tell me that the bill assures a full EA, because obviously each EA will vary depending on the decisions made by the minister. When we're looking at projects, there are certain things, in my mind, that can't be omitted, such as looking at alternatives. If the minister has the power to say, "I'm going to exempt this particular part of what would normally be in a hearing this time," then I think the public loses confidence that a fair and honest hearing has been had.

The business community is being sent mixed messages, because instead of having absolute regulations, we now have things that are discretionary, and then I don't know if we have a level playing field. In one environmental assessment, a certain part of the terms of reference can be altered or omitted, and then when I come with my terms of reference maybe I won't get the same deal.

I think that these hearings on these kinds of projects shouldn't be of a political nature. The decisions that are made and the things that need to be discussed in an environmental assessment hearing of a landfill, for example, are things which should not be controlled by political decisions. They should be controlled by engineering, scientific expertise and social need. So I think an exemption is —

Mr Galt: Do your comments today represent those of the board of education that you work for?

Mr Fraser: No.

Mr Pettit: Mr Fraser, you mentioned a level playing field when it comes to intervenor funding. It seems that the act as it is now encourages public participation more at the tail end than the front end. Would you agree that with the enshrinement of early mandatory public involvement, along with the terms of reference, that will help to alleviate the last-stage problems we see now that obviously add to the already significant costs of the process?

Mr Fraser: If having public input in the terms of reference is necessary because the terms of reference are up for debate, I don't see a need for that. I don't think the terms of reference should be up for debate. There may be specific things that need to be discussed, but the key elements of the hearing should not need to be debated. So certainly having more public input is better early on, but if that's because we're discussing what we're going to exempt, I have a problem with that.

Mr Michael Gravelle (Port Arthur): Thank you, Mr Fraser, for your presentation. I think the fact it was somewhat graphic too is helpful. I just wish there was a camera here to get some shots of you doing that.

Certainly there is no question that when you're looking at major projects of this type, to determine what the alternatives are is really crucial and important, and that

should be in there, but I want to just focus for the short period of time we have on the concept of intervenor funding. I think there is a desire somehow here to find a balance and I think there's a feeling this particular bill is focusing on perhaps moving to basically speed up the process, streamline it or whatever it's called, and of course there is great concern by many people in the province, and obviously some of us on this side share this, that moving fast can be dangerous unless there are enough checks and balances in place. That's where intervenor funding becomes rather crucial.

No matter what happens, it seems to me that to talk about public consultation and the ability to even have it enshrined in this bill as a bill-related public consultation is somewhat farcical unless the public has an actual opportunity to participate. I want to get more of your thoughts on what it means if there isn't intervenor funding in terms of the public being able to be involved. How involved can they get and what kind of a playing field is that?

1230

Mr Fraser: Without intervenor funding, it makes it very difficult for community groups, especially in the north, perhaps spread out over a large area, to do very simple things like communicate effectively over the phone, be able to hire the expert witnesses, have counsel. These hearings are performed largely by lawyers, and for the public to be able to participate in a fair way, it seems that — I suppose that if the proponents feel they need lawyers and the governments feel they need lawyers, then there must be some merit in having legal counsel. Certainly small communities and members of the public at large do not have the resources to provide those resources, so I think it's only fair that they have a level playing field when it comes to the actual hearings.

One of the concerns, one of the things we hear about over and over is time and time lines. I come at this not from a politician who has to have things done within my mandate, but as a teacher of environmental science and biology, and I look at time lines in a slightly different way. We're on this earth for an incredibly short time and we have real blinkers on when it comes to time lines.

When we get to high-level radioactive waste hearings in northern Ontario, when we get to landfill projects in northern Ontario, when we get to forest management in northern Ontario, we're talking about things that occur over many lifetimes. These are very long-term impacts. Our whole approach to environmental integrity tends to be focused over a couple of years. If we have an urgent need for a landfill site because we have not had the ability or the desire to look ahead and to recognize that we have to plan far into the future, then that's our own problem, but you can't rush a project with very long-term implications with the excuse, "Well, we only have two months before such-and-such an event occurs in our political spectrum."

You have to look at the time lines, the real environmental time lines, the real ecological time lines. Those are the ones that count. Whether or not there's going to be cod in the north Atlantic in 100 years: Those are the time lines, not whether or not there will be 10,000 cod fishermen out of work next month. That's a serious

concern, but the bottom line is either you're going to have cod or you're not, so I think the political reality is very different from ecological reality and the time lines you need have to be realistic to the problem.

Ms Churley: Thank you very much for your presentation and I'm glad you got into some of the issues around what is garbage. Garbage is not garbage; it's also this whole issue around resource consumption and pollution and social values, all kinds of things, which of course is what an EA should be all about. It's not just about putting the right lining in the right hole. It's so much more encompassing.

I have to take issue with Dr Galt again on his statement that this bill is about full environmental assessment. We really need to get that clear, because it isn't. Let me explain again. I may not ask you a question because I really want to get this on the record and clear.

The terms of reference could be a useful tool, and this has been pointed out by some environmental lawyers, in terms of looking at the issues relevant to the undertaking and designing the specific process for the hearing. But what's happened here is that there are existing requirements, that's true, in this bill. Section 6.2 mandates the terms of reference will require an EA document to contain the elements found in subsection 6.2(2). Okay, that's good, that's there, and those are existing requirements, which include alternatives to the undertaking and need. That's there, but then it goes on to say that during terms of reference, in each and every case, those elements can be thrown out.

Therefore, you now have the ability to go ahead with siting of a landfill or an incinerator, for instance, without looking at the alternatives. I asked government officials this very question around, what if somebody wants to site an incinerator? Do they have to look at alternatives, because alternatives are important here, particularly in terms of the 3Rs, since it consumes the basic same things. I was told no, not unless that company is also in the business of doing 3Rs. That needs to be clarified, but it's very clear, Dr Galt, and the whole committee, that this could mean there will be no full environmental assessment.

If you mean what you say about a full environmental assessment, you will amend this section so that it is very clear what type of hearing and that kind of thing can be discussed under the terms of reference with full public participation, but that it is very clear that nobody can opt out, the minister can't give favours here and there. There's no certainty in that for the proponent. Think about the lobbying that's going to happen on each and every proposal. This is crazy. It doesn't make sense and it's not true to say there is a full environmental assessment guarantee. You're going to have to face that.

I just had to get that out of the way because it keeps coming up time and time again, also on public consultation. The big myth about that — I keep saying look back to other EAs. De facto, there was public consultation from the very beginning. It's nice that it's enshrined now, but there always was and always would be in this thing. But with no intervenor funding and no guarantee that the public will be involved in the very important negotiation on the terms of reference, you've got a problem. It turns

it into a sham. You have to face the fact that you've been sold a bill of goods here by your minister or the bureaucrats in this thing or whatever, because you're telling people something that it's been pointed out time and time again is not so.

Do I have any time left?

Mr Galt: Do I get to respond.

Ms Churley: No, this is my time.

The Chair: You have one minute left.

Ms Churley: I think you would you agree with that, from your reading of the bill.

Mr Fraser: I would, definitely.

Laughter.

Ms Churley: However, as we all laugh, for those of us — as I too in my past have been involved in huge proposals coming forward from my community, we know how important it is. The fact remains that if these things aren't taken care of, there will be in many cases no full environmental assessments. I think that is your major concern, is it not? It came to me you have many, but I think you're asking the government to make sure that all aspects of EA —

Mr Fraser: I think everything needs to be looked at. If a massive landfill is put forth as supposedly the undertaking, the real garbage problem isn't at the edge of the pit, the garbage problem is in the shopping malls and the supermarkets. If we're not looking at what we are doing in shopping malls and supermarkets, then we're always going to be left at the end of the line with this pile of stuff that we perceive as being the real problem. That's not the real problem and that's never where you'll find the real solutions.

The Chair: Mr Fraser, thank you very much for your presentation and your props this morning. We appreciate the time you've taken and the effort you've made to be with us to share your views.

Mr Gravelle: Before we break for lunch, I just want to ask Dr Galt whether or not he has some response from yesterday. Yesterday a member of the Sierra Club provided some information to the committee related to the Ministry of Natural Resources seeking a possible exemption under the class environmental process. Dr Galt, I thought, said he would try and get a response back to us this morning. I'm curious, obviously, as to what —

Mr Galt: We'll have it for you this afternoon.

Mr Gravelle: Thank you.

Ms Churley: Last Friday, I requested —

Mr Galt: Yes. Coming.

Ms Churley: When is it coming?

Mr Galt: This afternoon.

Ms Churley: For the purposes of record-keeping, I asked for a list of existing communications communicating with the public, public consultation guidelines, which already exist in the ministry for existing EAs to be brought forward so it'll give us some guidelines for the —

Mr Galt: Right. You'll be well looked after.

The Chair: My understanding is it will come this afternoon.

The committee recessed from 1241 to 1331.

The Chair: Just before we start, we have an announcement by Dr Galt.

Mr Galt: We now have the answers to the two questions that were posed, one last week and one yesterday, if I can turn these over to the clerk for distribution purposes.

The Chair: Very good. Thank you very much, Dr Galt.

NORTHEASTERN ONTARIO MUNICIPALITIES ACTION GROUP

The Chair: We begin our hearings this afternoon with the mayor of Cochrane, I presume, and also some reference to the mayor's action group, which is a northeastern Ontario grouping of municipalities. Mr Mayor, welcome to our hearings.

Mr David Hughes: Thank you, sir. I appreciate the opportunity to appear before you today. While I appear alone, you can be certain that I represent all communities that are members in our association. Their support is with me as I make this presentation to you.

The Northeastern Ontario Municipalities Action Group is pleased to make this presentation to the standing committee on social development. We believe that our position will give the committee a northern Ontario perspective on what the Environmental Assessment Act and these changes under Bill 76 will mean to municipalities in northern Ontario, in northeastern Ontario specifically.

Our comments today will touch on three topics. First, I would like to describe our group and the mandate under which we operate. Second, I would like to give you some history from a northern perspective on why the current environmental assessment process is unfair to municipalities, particularly the smaller municipalities. Finally, I wish to express our views on why the current legislation and these proposed changes do nothing to help economic development in northern Ontario and in fact will hinder efforts to encourage industry and sustain our vital transportation system in the north.

The Northeastern Ontario Municipalities Action Group represents approximately 40 communities along the Highway 11 corridor of northeastern Ontario, between the city of North Bay and the town of Hearst, with a total population of over 250,000 people. I have attached a list of these communities to my presentation.

The action group was formed to address two key issues. Our mandate is to protect and improve the transportation system that links northern Ontario to southern Ontario, and as a commissioner on the board of the Ontario Northland Transportation Commission I can tell you that the transportation system is suffering financially and needs new opportunities. The second mandate of the action group is to collectively promote economic development of the member communities along Highway 11 north.

Past successes of the action group are testimony to the combined strength of the member communities. Collaboration on issues that affect northeastern Ontario has demonstrated to the rest of the province that communities in northeastern Ontario are determined to ensure the economic and environmental wellbeing of the citizens and the part of Ontario they represent. The action group will continue to support creative and environmentally respon-

sible approaches to economic development in northeastern Ontario.

Members of the action group will agree that the present environmental assessment system is ineffective and inefficient. There is tremendous duplication in the process, particularly in the establishment and siting of landfills in the province. The process simply costs too much and takes too long, with no certainty whatsoever that any effort or financial commitment will have a positive result at the end of the day.

A case in point — as I listened to some of the presentations earlier, I will say I think that we win the lottery in this one — as the mayor of the town of Cochrane, a community with a population of 4,348, we have been trying to site and permit a 20-hectare landfill site for over 13 years, at a cost to date of over \$360,000, and we are facing costs of an additional \$300,000 over the next 12 months, yet there is still no certainty and there are nothing but question marks.

Business cannot operate that way, neither can municipalities, especially now, when funding is being cut and we are forced to do more with less. That is fine, and we can live with that, but as you cut funding you have a responsibility to provide a process which is clear, fair and timely, allowing us to develop projects to comply with all environmental regulations, standards and guidelines. It is impossible for municipalities to plan properly and finance their landfills under the current legislation.

We support the government's objective to restructure the environmental assessment process, which we all believe is in need of reform. The goals are accurate and achievable. We need greater certainty and timeliness, with reductions in costs and no limitations in environmental protection. We have no confidence in the current Environmental Assessment Act, and any revision must instil confidence that the process will work for municipalities as well as for the private sector.

There are strong advantages to adopting the flexibility of the Planning Act. This is a front-ended process which requires proponents to describe their process and provide information and detail up front. The process prescribed by the Planning Act is transparent. It requires public participation and allows for an investigation which is based on the advantages of a specific site for a specific use. It allows for very clear time frames for any municipal council decisions and permits an appeal.

Ontario is a diverse province, as we know, and different municipalities have different issues to address. However, economic weaknesses are inherent in northern Ontario due to its smaller population base, the distance from the south to the north and the markets and product sources therein.

In terms of waste disposal, the unbalance is very obvious. There are no large volumes of municipal waste in the north to justify the development of state-of-the-art regional landfills. There is far too much geography to enable municipalities to take advantage of joint agreements and cost-sharing. Southern Ontario communities, however, are able to join together, combining volumes of waste for economies of scale and developing joint agreements for the use of land and regional facilities. Even more critical is the potential ability of southern

Ontario municipalities to contract out their waste disposal services to the private sector. Metro and other GTA regions are large producers of waste and they are situated close to the US border, making the private sector anxious to garner their contracts. What may be developing in Metro Toronto is a case where it allows its waste to be shipped across the border to sites in the United States.

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In comparison, northern Ontario has no such options. We are faced with complying with cumbersome EA legislation to site local municipal landfills because we do not have sufficient volumes of waste necessary to attract the private sector and we are not located close to a US border. As it currently stands, southern Ontario communities can simply circumvent and opt out of the EA process entirely by contracting out their waste disposal services to the private sector. Abdication of environmental responsibility demonstrated by exporting Ontario waste, particularly the volumes in question, is unacceptable to us. To be fair, northern Ontario should be allowed an equivalent way out of the EA act, as is available in southern Ontario communities. The process should apply equally to all communities across the province.

Although parts of Bill 76 represent a direction to achieving the government's objective of streamlining and revamping the environmental process, it simply does not go far enough and does nothing to prevent the shipment of municipal solid waste to United States sites across the border.

The proposed changes under Bill 76 do not make compliance easier for Ontario municipalities or private sector proponents. We see nothing in this bill that changes the high cost and uncertainty of entering into an Ontario environmental assessment. Therefore, because of the costs of establishing and siting a landfill in Ontario, US options are emerging as the only affordable disposal sites for any municipality with large volumes of waste located close to the US border.

The comment made to this committee by the Ontario Waste Management Association last week that, and I quote, "The ultimate environmental legacy of this government will be that it chose waste export to the United States as its preferred method of waste disposal," is very disturbing to the action group. We see waste management as a possible economic opportunity for northern Ontario and have been supportive of the Adams mine rail-haul project since its inception. The importance of this project to the Ontario Northland Railway and this railway's importance to all communities in northeastern Ontario make it mandatory that we be involved.

The Adams mine rail-haul project solves two problems for northern Ontario and serves to enhance both our mandates: economic development, and improvements to the transportation system. In addition, it improves the north's ability to provide superior landfill capacity.

Southern Ontario has the waste quantities and sufficient volumes to be a strong industry and it has a need for cost-effective, environmentally secure disposal capacity. Northern Ontario has an efficient rail system and an environmentally secure disposal site, as well as a labour force ready, willing and able to work. All will be

lost to the United States unless Bill 76 implements changes to give northern Ontario a level playing field.

The Adams mine rail-haul project is the only in-Ontario solution being considered by Metro Toronto for disposal of municipal solid waste, yet it is seriously considering signing a short-term contract with a US company. This is the first example of how an Ontario opportunity can be killed by easy access to US disposal sites. Job creation, tax revenues, capital investment, freight revenues to the ONTC, host community benefits and education programs are just a few examples of what will be shipped out of the province with waste contracts.

I'll just interject, I apologize for the bulk of our document, but a lot of what I'm speaking of is referenced in the amended materials that you can peruse at your leisure with regard to previous submissions we've made in this regard.

The government must not allow US interests to take control of the waste management industry in Ontario, denying the north and indeed the province of Ontario any chance to develop projects such as Rail Cycle North.

In-Ontario solutions to solving environmental issues are consistent with provincial and federal policies; US solutions are not. The Honourable Brenda Elliott, Ontario Minister of Environment and Energy, has said, and I quote, "We want to see made-in-Ontario solutions working for Ontario." This will not happen unless the options to contract out waste disposal to the US are reviewed by the EA process or unless in-Ontario disposal sites are allowed clear, fair and timely approvals that are not hindered by the bureaucratic legislation that exists today.

We agree that Ontario should be self-sufficient in the management of its waste. In order to achieve that objective, the process must fit with keeping the waste in Ontario and providing municipalities and the private sector with an approvals process that is streamlined, ensures — I highlight "ensures" — environmental protection and is applied equally to all communities in Ontario.

Mr Dalton McGuinty: Thank you very much, Mayor Hughes, for your presentation. Reference is made here to the Planning Act. I can't recall who it was now, but I believe we saw another group on our first day of committee hearings that spoke of some attractive features of the Planning Act and essentially made a recommendation that we ought to look at folding the environmental assessment process — not the Environmental Protection Act, but the environmental assessment process — into the Planning Act process somehow. Is that something you advocate?

Mr Hughes: All I'm suggesting, sir, in an analogy is that when somebody appears before your local planning board or any planning authority, the proponent has the responsibility to document his plans in their entirety and put them in front of you. At that point they are put out for public review, everything being equal. It's all there: The intent is there; the opportunity for input is there. Once that has been achieved, the viability of that project is determined and it's allowed to go forward. There's no appeal at the end that can change that process. The work is done up front in a collaborative manner so that the

viability of the project can or cannot be determined. I think that's our point in this regard.

Mr Dalton McGuinty: I really appreciated your comments about some of the difficulties that are peculiar to dealing with waste in the north. You know, I like to say that if you hang around Queen's Park too much, suddenly you think you've got all the answers.

Mr Hughes: Sir, we are absolutely aware that you don't.

Mrs Ecker: You walked into that one.

Mr Dalton McGuinty: Yes, that was a setup.

Travelling like this gives us an opportunity to get in the communities and find out on a firsthand basis some of the particular challenges you face. What kind of changes are you recommending be made to Bill 76 then?

Mr Hughes: From the municipal perspective — and I allude again to my particular experience where we've been 13 years in the process. We are now at a point where a candidate site has been identified. We have followed religiously all the criteria expected of us in determining where that site is going to be. We have the consultants, we have the government on board and we've had all the public meetings and all the public input. Yet at the end of the day, when we are now doing all the scientific research necessary to either prove or disprove the viability of that site, those who have not been part and parcel of the process all the way through and have no understanding of what brought us to that point are allowed to present themselves before us to further retard the process. Yet the opportunities have been there for them, as they have been for everybody else, all along.

That's why I'm saying we don't want to jeopardize the environmental integrity in the process but we want the information up front, everything that's there, to determine how you're going to proceed. Once you proceed, you do it in partnership. You do it in whatever partnership is necessary to alleviate the concerns of all parties. You're never going to satisfy everybody — I honestly believe that — but if everybody knows the data up front and what you're going for, then the end result will be clearly defined for everyone when you achieve it.

Mr Dalton McGuinty: You're not arguing then, as I understand this — you let me know if I'm putting words in your mouth — that we have anything less than a full environmental assessment hearing.

Mr Hughes: No, I'm not arguing against environmental assessment hearings.

Mr Dalton McGuinty: But I think what you are arguing is that at some point we should have closure.

Mr Hughes: At some point there has to be closure. Absolutely. It can't be permitted to go on forever. You're going to apply all of your resources and every bit of scientific technology available to you to determine to the best of your ability what it is that you're seeking in environmental integrity. Once that is done, you can't get beyond that point. I just say there has to be closure at some point. It's not affordable to carry it beyond that.

Ms Churley: Your presentation was quite interesting in terms of the frustrations you've experienced here. The stage where most of the delays occur with EA is through the government review. I don't know the details of yours, but it's overall. Anybody I have talked to, from all sides

of this issue, has said there need to be clearer rules. I'm sure that's what you were saying as well. You think you're going along the right track; this is what you've been told to do, so you go out and dutifully do it, and you come back and you're told, "Oops, the rules have changed; now we want X and Y done," and this keeps happening. Is that generally a correct statement?

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Mr Hughes: That's very true. I'm not arguing that at all. All I'm saying is that as the process proceeds, the process has to be defined, all the proponents to that process have to be involved at the same time, heading in the same direction. Whether they agree or not, the process has to be clear.

Ms Churley: Whether or not you agree with all the time frames as they're outlined here, throughout that process you would say they would go a long way in terms of speeding up the process and making it more concrete in terms of where you're going?

Mr Hughes: Yes.

Ms Churley: Therefore, what I'd like to come back to is the public consultation at the beginning of the process. If time frames are built in, which is part of this bill, then would you agree that public participation at the very front end, around the terms of reference, should be inclusive including the community and the municipality so that everything is on the table from the very beginning and not later on in the process? Do you think that would go some way to defining the issue so you can get on more quickly with it?

Mr Hughes: Without question.

Ms Churley: Okay. That's an issue that keeps coming up time and time again, and we'd like to see that enshrined in the legislation.

Mr Hughes: The process should be in place from the beginning.

Ms Churley: You mentioned the Adams mine, and we're all aware that that's been controversial on a number of fronts. When you talk about public participation and being fair to everybody, how do you see that working when you have a group of people, especially the people, as I understand it, who live very close to it, who are fundamentally opposed, for a variety of reasons? Do you think it's fair that they should be given intervenor funding so they can be involved in a positive way, or at what point do you feel they should be shut out, if you think they should be, to get on with it?

Mr Hughes: The question of intervenor funding is a tough one, I will admit, and I've given it some consideration, because yes, people have to be able to participate. Public opinion is what we all, I would hope, build our decisions upon. But I don't think intervenor funding is useful if it's used solely to fund opponents to any proposal travelling to whatever jurisdictions are necessary to speak out against it. Intervenor funding is useful if it's used to accumulate data relevant to the project, that can prove or disprove the project. That's important, and I have no problem with that. But if intervenor funding is used simply to transport people from point A to point B to oppose a situation, and if that isn't based in fact, just in fear, I don't think that's what we intend intervenor funding for.

Ms Churley: So you support it but with specific guidelines so it's not abused?

Mr Hughes: I think it would have to be clearly earmarked.

The Chair: I have four interested Conservative members. I don't know how many of you are going to make it on the list, but I have Dr Galt, then I have Ed Doyle, Mrs Ross and Mr Stewart. Your colleagues will determine your fate.

Mr Galt: I'll try to be quick. Thank you very much for your presentation. I don't think you want to be congratulated on the lottery whereby you've come out with the longest, as has been mentioned here today.

It's unfortunate that the system's broken. We're trying to fix it and make it work better. To be fair, though, there have been significant administrative reductions in the Ministry of Environment and Energy over the last several years to get it from the neighbourhood of 16- or 18-month review periods down to more like five or six. That still may not be satisfactory in our eyes. However, I just wanted to acknowledge that there have been tremendous improvements compared to what it was. An awful lot of our problems relate to the, you might say, almost out-of-control hearing process and going back to zero with many of the issues.

What I wanted to ask you a question on relates to export to the States, because the border is open, we have to acknowledge that. I gather from your presentation that an EA process would be satisfactory. I'm wondering, from an environmental concern, the kind of landfill site it goes into. The last presenter was telling us how far ahead we were with handling of our solid waste. Yesterday we were told by a presenter — they went to a conference in the US — how terrible it was back here in Canada; they weren't impressed at all. We're getting very conflicting stories. Would you be comfortable if it had to go to a landfill site with standards at least equal to those in Ontario, if that came out of an EA process?

Mr Hughes: I would not be comfortable with that, sir, if it could be proven exclusively that we could handle it in an environmentally secure fashion in our own province. I would not be comfortable with that at all. If I might just refer you to the second-last page in my document, it clearly outlines the benefits of that not just in northern Ontario. When you're talking \$80 million in tax revenues to the province of Ontario and so on that could come from that, no, I wouldn't be comfortable.

Mr Galt: What kind of things would you do to change it when we have an open border for trade purposes?

Mr Hughes: I don't want to fly in the face of competition, but I am a northerner, and I'll say that with all candour, and our opportunities in the north to provide economic opportunities are not presenting themselves every day. When we're looking at issues such as this, if indeed the opportunity is to do it with equal care and caution in our region or indeed the province, I'm sorry, I just think that's — we get accused all the time of being at the trough too often, but when we try to present ourselves in an aggressive fashion to look for economic opportunities, we too often get turned away. I would just suggest this is one of those times when we want you to

look seriously at what it means not only to our region of the province but to the province as a whole.

Mr Ed Doyle (Wentworth East): I'll try to be brief too. No matter where a landfill is proposed, there's always controversy. I'm wondering, if it's been very controversial here, just how much it's divided the community. Has there been much of that? As an elected official, how would you feel about that? Has it been understated, has it been overstated?

Mr Hughes: No, controversy cannot ever be understated, and I think it's important that it always be noted. I would never suggest otherwise. As elected officials at whatever level of government, we know that we face controversy all the time and we have to make decisions in the face of that controversy. We make those decisions on the basis of what we consider to be the best interests of our constituents. That's our responsibility. I'm here today to say to you that the elected representatives in the majority of the councils that I represent favour the Ontario solution. That's my response.

Mrs Lillian Ross (Hamilton West): Mr Mayor, thank you very much for coming here today. Do you feel that the new environmental act we're trying to bring forward is going in the right direction? With terms of reference at the beginning, public consultation throughout the whole process, mediation and a mechanism for that, do you feel that's a step in the right direction?

Mr Hughes: I think I make that remark in our presentation. Yes, it's a step in the right direction, but I don't think it goes far enough. I think the process has to be more clearly defined, and I think that can be achieved.

As my colleague just mentioned in answer to a question, we talk about things like intervenor funding, yet I make reference to the Planning Act. Well, the Planning Act provides for all kinds of input but there's no intervenor funding when it comes to dealing with planning issues. Again I have to say, at what point is it necessary and at what point does it achieve the end? If everybody is working from the beginning together on a clearly defined set of objectives, perhaps that might eliminate that need. I don't know. And I don't know if I answered your question either, I'm sorry.

The Chair: Sorry, time has expired, Mr Stewart.

Mayor Hughes, thank you kindly for preparing and being with us today and sharing your views. We appreciate it very much.

TIMISKAMING TOMORROW

The Chair: We next have Mr Ambrose Raftis. Welcome. You probably have heard the instructions because I note you've been here most of the day. Whatever time you leave after your presentation is divided equally among the three parties. Welcome, and I look forward to your presentation.

Mr Ambrose Raftis: Thank you for this opportunity. I might apologize if my tone seems a little blunt. I spend time with business people and they usually don't have time to talk over issues for a long period of time.

Timiskaming Tomorrow is a group established to promote environmentally and socially acceptable ventures in northern Ontario. Our historical areas of interest are

hydro-electric, ethanol, and now agricultural fibre production. For the first month after I heard the proposal by Metro to build a recycling landfill site at the Adams mine site, I thought it was a good idea. This was until I had conversation with a groundwater scientist who, when I described the project to him, scratched his head and said, "Why would you ever want to do that?" He went on to explain how traditional landfill sites work and detailed the non-existence of any science to manage leachate flow in fractured rock sites.

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We have over five years of investigations into the feasibility of the site and are now in preliminary consultation for an environmental assessment. I guess I'd like to rephrase that at this point. It's not really an environmental assessment; it's a site review with Notre of North Bay. I have been involved for the past six years in learning the sciences of waste management and hydrogeology and, over the past 18 months, learning how environmental assessments for waste sites really work. I think it might be advantageous, because when you make legislation it's pretty important to see how it's actually carried out, and I've got some fairly specific examples.

In a preliminary investigation at the Adams mine site bore hole 13, water flow was recorded to be over 100 gallons per minute. The engineering company calculated the flow for the whole pit, which is half a mile long and 350 feet deep, would be less than 50 gallons per minute, or about six garden hoses was the example they used at the meeting. When it was pointed out that two six-inch lines were needed to empty the pit during the operation, and on a few occasions, when the pump system failed, 20 feet of water filled the bottom of the pit, the engineering company said they were looking into operation records.

It was also pointed out that if a small hole could produce this much water it proved two things: that the method of analysing the water flow was incorrect and that the main method of water flow was not through solid rock like the engineers were using as their analytical method, but was through fractures, and that this would make the site a poor candidate for any waste storage. The response by the engineering company was to eliminate all bore hole data water flows, including the critical hole 13, in all subsequent reports. The reports sent to the MOEE are incomplete because any evidence that is contrary to the development of the project has been eliminated.

When consultants are hired to investigate the feasibility of a proposal, they are paid by the promoter to represent the interests of the promoter. In my experience, some engineering consultants only present information that is supportive of their interests and the perceived interest of their client. Preliminary studies for Metro were in the \$3.5-million range. If these preliminary studies showed that the site was not feasible, the engineering companies would not be in line for the \$18 million to \$30 million in additional work that would arise if the site proceeded. We have found that consultants know where their bread is buttered and are quite willing to eliminate evidence, misinterpret data and make unsubstantiated comments, all of which are directed towards creating the impression that the project looks positive and that further studies are required.

When professional engineers design and build a bridge or a car and it malfunctions, the company that employs the engineer is responsible for the product and the product impact. In waste management, consultants are free to make unsubstantiated claims about the effectiveness of their design because they assume no liability for design failures. In fact, when sites fail, their expertise is required to attempt remedial measures. In reality, in the waste business in Ontario nobody is held accountable except, in the end, the taxpayer of the province.

I'll just offer a little bit about the public consultation process because we've been spending a significant amount of time on it here and I think it's flawed just in its basic concept.

The public consultation process is used by promoters and their consultants to determine what the areas of concern are so that controversial evidence can be skirted or removed from reports before submissions to the MOEE. Concerns that threaten the fundamental viability of the project, such as flow in unsaturated rock, effects of bioaccumulation or design rationale, are brushed off and not studied effectively.

I'd like to give you some examples of this. In the presentation I have some diagrams, and you might want to refer to the one entitled "Regional Subsurface Water Flow System." It's the first diagram. This diagram shows an aquifer intake or charge area located to the north of Kirkland Lake. The farming area of Timiskaming is south of that pit and is 300 feet lower in altitude than the top of the pit. Connecting these areas is a fault system known as the Lincoln-Nipissing fault.

It was pointed out by the public at public meetings that flowing wells existed in the townships south of the pit and it seemed only logical that the water from the aquifer may travel south in the lower regions of the fault under the pit. It was also pointed out that the direction of groundwater would be north to south, putting the Adams mine between them. The response by the consultants was to eliminate the aquifer intake, the fracture and the farm land on regional cross-sections in the future. All future map cross-sections were tightly cropped, which eliminated the aquifer and the clay belt elevation. By a few strokes of their delete key, the problem disappeared so MOEE would not be confronted with conflicting information.

Another example: In the first stages of drilling, some holes showed areas of loose gravel. Although this is noteworthy in a site described in the reports as "impervious rock," no further investigations were done. It took investigations by the Timiskaming Federation of Agriculture on existing government maps to discover that the pits are intersected by a major gravel moraine. This moraine travels north and south and could act as a major conduit for leachate into the farm area water table. The gravel moraine, to our knowledge, is not included in consultants' reports even today.

Refer to the next drawing, titled "Non Saturated Rock Fractures." These allow leachate to escape hydraulic confinement. The pit is located in a piece of rock that is 300 feet above the farm land to the south. The drawing shows some of the many ways that it can allow leachate to get into the water table.

Both the EPA in the US and the institute for groundwater studies in Canada recommend against burial of waste in fractured rock. Why? Simply, there is no scientific method in existence anywhere that can effectively predict water flow or leachate flow in unsaturated fractured rock. The Adams mine is a heavily fractured, elevated site with major faults travelling into and around the pits. The consultants used a model designed for homogeneous materials like clay and sand to predict both direction and volume of water flow in a fractured site, and there's a reference at the back of the document that supports that. They extrapolated these data into evidence that the pit could be operated without a liner. The conclusions they came to are based on a pit that does not exist.

The next drawing refers to the "Timiskaming Water Supply Profile." Water flow in and around the pit cannot be calculated because the size, location and direction of flow and exit points of these fractures are not understood. When leaks occur, untreated leachate will flow into the surface water table or directly into the aquifer. In fractured rock, water flows millions of times faster than in clay and therefore contamination potential is greatly increased. Leaks in early operations at the West Marin sanitary landfill site in California, and there's a reference there, occurred through a subsurface fracture that carried leachate over a mile from the site. There is no effective method of finding the path of the leachate leaks, so there is no way of stopping the leachate flow in fractured rock except by emptying the pit. When a leak occurs in fractured rock, it continues indefinitely. The fact remains that even after \$3.5 million worth of studies at the Adams mine site, no investigations were done to locate fractures or measure flow in them.

There's a diagram that says "No Science Exists to Manage Landfills in Fractured Sites." I don't have the quotes in front of me, but you can read them through. Basically there are some prominent North American scientists who shy away from the concept of rock storage because there's no way of putting a monitoring well in it. You can put a monitoring well down here, you can have a fracture that travels two inches from it and that leachate will travel past it, so you have no way of knowing where that leachate is going. If you have no way of knowing where it's going, then you have no way of stopping it or halting it and what you have is a runaway site with unlimited levels of liability on it. You can refer to those in your spare time, if you have any.

Although the science community does not support this type of proposal, current and proposed legislation could allow it to proceed by the proponents supplying the right volume of data or through political intervention. Despite the intent of the current and past legislation, waste dump sites will be developed that will fail. Some will have minor impacts; others may have catastrophic consequences.

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There's another drawing, "Risk Comparison for Site Types," and this refers a little bit to the example we talked about earlier: the American site and the Canadian site, and we should have put in the Canadian site because it's Canadian. The major difference between the two sites

is that one has scientific support. The site I'm familiar with in Utah gets eight inches of rain per year and there's more evaporation than that, so there is not a leachate problem, plus that's a double-liner site. It's probably one of the tightest sites in North America. In Kirkland Lake they're proposing a site that's in fractured rock that has no science behind it. They're proposing a gravel liner and a backup system that doesn't exist. Once leachate gets through that liner and into a fracture, there's nothing they can do about it. It's a runaway site.

If we're comparing these two sites on purely environmental concerns, there is absolutely no comparison. The Canadian site I guess may be getting some bad press in the States, because when people look at it they shake their heads, but there is no comparison. This site has no science behind it.

This diagram represents the risk factors that are involved in a site. The diagram is a visual analysis of risk management in both clay liner sites that have a proven record of design and fractured rock. Clay sites with liners could eventually leak, but there is an effective method of monitoring for and halting leaks that occur. Because leachate travels slowly in clay, potential for widespread damage is minimal and the owner of the site can cover the potential liabilities.

In fractured sites there are many non-detectable methods of leaking in fractures that could travel as much as a kilometre a day. Because it is undetectable it may not be noticed until large-scale aquifer contamination has occurred. Even when contamination is observed there is no method of determining the path by which it got there, so no method of halting the flow. The only solution to a leaking site is to remove the waste and redispense of it in a safe site. The owner would have trouble covering this level of liability and the taxpayers would be on the line. The result is a project where liability costs would exceed the potential income of the site.

We have used the adversarial method to develop quality evidence in previous EAs and in the court system. Without the threat of public exposure, the quality of work by consultants has no measuring stick and very quickly deteriorates into engineering editorials of self-interest. The dropping of funding for scientific intervenors will be the primary cause of inappropriate decisions, resulting in significant environmental damage. It is not that we do not have the scientific knowledge to prevent these consequences. The knowledge does exist, but the system you are responsible for does not ensure that this information is available.

In light of my six years of experience at the Adams mine project, I have the following recommendations that would, in my view, reduce the failure rate of future sites:

All sites not qualifying for generic liner designs have to go to a full EA hearing before a panel, with intervenor funding established at 35% of the promoter EA budget.

To protect politicians and MOEE employees from long-term liability claims against them, no declarations or exemptions would be allowed on non-standard designs for landfills.

Consultants who propose designs will be required to assume financial responsibility through bonding insurance for designs and the consequences of their failure.

Public consultation processes should be directed by the public through structures established at public meetings. The public consultation committees should control the budget of the intervenors and the peer review consultants.

In communities where any waste is imported, the public consultation committee should have the authority to establish more stringent levels of design and operation to ensure the protection of their communities in a way that they see fit, as long as these standards do not fall below the current MOEE standards. In import sites, the option of an area-wide referendum would be available to the public consultation committee.

In privately owned sites, operators must have adequate financial resources in place to cover liabilities arising from design failures and long-term operating costs before getting approval, without relying on projected site income. The rationale behind that is, if you put a site in that is poorly designed, it won't achieve site income and there won't be any funds available to do remedial work. Liabilities should extend to personal assets of the site owners, including shareholders' personal assets, upon catastrophic failure before taxpayer involvement. If communities have their personal assets, family homes and lifestyles on the line, let's level the playing field and put the personal assets of the owners of the site on the line too.

The entrepreneurial spirit is a wonderful thing. It allows us to take on projects that we would never take on if we fully understood the ramifications of them. This spirit is also what causes the failure rate of businesses to be around 80%. We cannot afford this level of failure with projects that can have critical impacts on the environment.

Your legislation allows protection of communities from themselves. What it does not provide, in my interpretation, is any protection for a community against the damage caused by private developers whose potential for financial gain blinds them to the catastrophic impacts they can have on others.

Proceeding without full EA, including panel hearings and intervenor funding, on major sites will not bring forward critical information and thus does not show due diligence. Declarations and exemptions from full EAs will leave MOEE ministers and their staff open to personal liability suits long after their term as government is complete. The potential catastrophic consequences with large-scale contamination of aquifers, as occurred in the US at Plates River, where 18 square miles of farmland were permanently contaminated, is a major liability. If you allow the removal of parts of a system designed to protect the environment, future governments backed by angry citizens could decide to make all those responsible for the decision accountable.

You are the government of the day. You are responsible for the impacts of the decisions not just for today or the term of government, but in this case for the next 500 years. It would be prudent to offer the environment and yourselves as much protection as possible.

Ms Churley: Sadly, we have heard similar stories in other locations from citizens who have had bad experiences with proponents. It's interesting that the mayor, who spoke before you, and you have different positions.

Mr Raftis: I've never seen him at any of our meetings. That's why we have different positions.

Ms Churley: I'm not here to discuss that aspect of it, but I think it puts into sharp focus one of the difficulties with a complex issue like this, which can have far-reaching results, many benefits for the community, jobs and economic renewal and all of that. But you're showing the other side, the kind of environmental damage that can be done.

I'm interested to know in terms of intervenor funding how you were able to get the information you have. Did you get intervenor funding? Where did this information come from?

Mr Raftis: No, actually we didn't get any intervenor funding. Metro, when they were there, had peer reviews, and I think people should be really clear about the difference between intervenor funding and peer reviews.

Peer review people can only ask questions. They actually generate no evidence of their own. What they do is review the reports that are done by the consultants and punch holes in them. They say, "You're missing this and this in this data." What we did was we looked through the data they were missing and then we went and found it in other examples of stuff, and it's a fairly extensive activity. If you look through, for example, the modelling method they used, the modelling method they used doesn't apply in this particular system at all, but the peer review people couldn't say that because they didn't have the evidence. They weren't up there digging up evidence. They could only look at the evidence that was presented. Had we had intervenor funding, an intervenor could have come in and said: "Here's the problem with this thing. We've done research and found the real solution for it, so if you can find it works with the real model, then go back to work."

But what happens is we have an open-ended research project. A bunch of work gets done and it never gets corrected, because there is no real intervenor funding. A lot of it is a shot in the dark, but where we got a lot of our information is from other sites that have had similar problems. We've talked to people there. In fact, the place in California we've spoken with said they were told exactly the same thing: Water doesn't go down through these sites; it always goes into the hole in the ground. Yet a number of years after the site was going in, the thing's leaking.

Ms Churley: I just want to follow up before my time is up, because this is really interesting information. My question is, what happens to it now, given that this is just peer review? You are in a transition, and you're saying the existing EA was problematic in that area as well. I'd like to know what happens now. You have this information. Can it be used? Will it be used? Will you be able to have expert witnesses bring these issues to the table at a hearing so that that's part of the issues the board will have to examine?

1420

Mr Raftis: I guess that's not our decision. That's the board's decision to decide whether there will be further intervenor funding. We've been doing this out of our pocket. We've been doing it for the last five years. It's been very costly and very taxing. We don't really have the capacity to go out and do any original research. We

have to rely on other scientists and lean on scientists who have sympathy with the bizarre nature of this particular study to give us comments and to help us out along the way.

So in many senses, unless the committee decides there's going to be intervenor funding and a full hearing, and I don't mean what we're doing now but a full hearing so that the other side gets heard, they'll never hear the other side. In fact, the other side has a very substantial scientific case and there's lots of evidence out there, but it has to be collected.

Ms Churley: The intervenor funding act has now come to an end and it has not been renewed, so I'm concerned that if you don't have credible scientists and witnesses at a hearing, this information won't do you any good, because of course the proponent has money to hire any consultants, specialists, he wants.

Mr Raftis: It sounds very much like a hearing case where you're going to get one side and the other side's not going to be there at all.

Mrs Ross: Thank you very much for your presentation. I am learning a lot about the environment and the Environmental Assessment Act through these hearings.

I want to ask you a question that pertains to a comment you made on page 2, where you said, "We have found that consultants 'know where their bread is buttered' and are quite willing to eliminate evidence, misinterpret data and make unsubstantiated comments all of which are directed towards creating the impression that the project looks positive and further studies are required." That comment was made with respect to the consultants who are hired by the proponents.

Mr Raftis: Right.

Mrs Ross: Just so that I can understand this, if intervenor funding has been provided in the past, wouldn't you say that those consultants who are hired through intervenor funding would be covered by the same comments?

Mr Raftis: No, not at all, because what happens is, when consultants are doing a report, they're assessing who's going to review that data. If you know you're going to have some credible scientist reviewing it, what's going to happen is you're going to put credible information forward. If you know nobody's really going to be reviewing it, then you can put anything you want forward because it's going to look legitimate.

What you need is a pair of matched technical skills, much like a court case, so that both sides can be presented. What that does is it controls the quality of the information. Right now what we've got as far as information from this EA is technical filler; that's what we call it. You take it to some of the scientists and they laugh at it. It's laughable technically. The consultants know, because they're expecting this not to go to hearing, that they can get away with that level of quality of information. The MOEE gets this third- or fourth-rate information because of the system they're supplying. So it's not the consultants' problem; it's really your problem. You're the ones who are establishing the method that establishes the quality of information.

Without peer review and without intervenor funding, that quality of information is very poor and it won't stand up scientifically, the problem being that if that case ever

goes to court, that evidence will look very poor. In the event of a liability case, real information will come up and will show that you made decisions based on very ineffective information. In many senses, it's the MOEE people and the people who make those decisions who are at the peril of this low-quality information.

Mrs Ross: Can I ask you if you think that in the new act, because we're allowing for public consultation right from the beginning and through the process, far greater public consultation than was ever in the past, because it always happened at the end of the process but now it's happening at the beginning of the process, and there's a mechanism in there for mediation as well where the two opposing sides will be brought together to discuss their differences and the issues that are outstanding — don't you think that's a better way of looking at things so that you can solve the issues up front?

Mr Raftis: I wish that would work. It doesn't seem to work with promoters.

Mrs Ross: You don't think that public consultation right at the beginning —

Mr Raftis: You use the term "public consultation." What that means is, and I'll boil this down fairly quickly, you ask somebody's opinion and you take their opinion and then you adjust your information so that opinion is invalid. Basically, you remove information so that opinion is not a concern any more. That's my understanding after 18 months in the public consultation process. It doesn't work the way you wish it would.

The only way you can make it actually work is you give the public consultation group the responsibility to run their own show. If some promoter's running it, controlling all the information, controlling the budget, controlling everything, he gets what he wants out of it, because that's what the project is set up for. He hires the scientists, the highest scientists are paid by them, and unless you have independent budget control by the public consultation process, it's really nothing more than a sham and a frustration for the public.

I think you'll create additional aggravation downstream, and that's where you get all the problems, because the real issues that we had at the beginning of this particular problem are still on the table and still not being solved despite the fact that we've been through all this public consultation. So it's not how long it's done; it's who controls the public consultation process. There's no question in my mind it has to be the public. It can't be promoters.

Mr Dalton McGuinty: Mr Raftis, I want to pursue this subject of intervenor funding a bit further with you if I might. I'm very much attracted to the concept of intervenor funding in that it allows people to be on more of an equal footing in terms of preparing to deal with an issue that's of great importance to them, but there's got to be some downsides to intervenor funding and we've heard about some of those too. I'm wondering if you might have any suggestions for us.

One of the criticisms, and I say this as a lawyer, is that we have spawned an industry, to some extent, of consultants and legal counsel who are more than anxious to ferret out any potential claims or sources of income with intervenor funding. That's a criticism that has been made before the committee before. I'm wondering if you're

aware of any other criticisms, and if we were to reintroduce intervenor funding in the province, what we might do to circumscribe it. Is that possible, to circumscribe it?

Mr Raftis: I think there are certainly ways of improving it. The suggestion of having a fixed amount of the environmental assessment budget allotted to intervenor funding and that's the end of it — you spend your money; it's a percentage of how much gets spent on the budget — reduces the game of it. This idea came up earlier. I think we need fewer lawyers and more scientists in the review process. In the scientific community, we've run into a number of them in this particular situation.

The Chair: It's the same for government, by the way.

Mr Raftis: They've got lots of evidence out there that in this particular case, and I'm using this case because it's the one I'm fully familiar with, had this gone to the scientific community, we could have saved a lot of money because they would have said, "What the hell are you doing putting a site in a place like this for?" There's no scientific rationale for it. There's lots of economic rationale. Sure, it's going to be okay for the railways, some town up north that doesn't have it in their yard. There's economic rationale, but let's look at the environmental perspective first. If it doesn't fit some basic rules, don't even bother reviewing it. Stop wasting people's time dragging them through processes that in the end should never be passed.

I guess the point I bring up is that the reason a lot of these sites are dragged on is because they should never been brought to the table in the first place. There should be some way of reviewing them in a preliminary process, saying: "No, this does not qualify for a basic EA. Get out of our face because we've got business to do with real people."

Mr Dalton McGuinty: Do you have confidence that at the end of a full environmental assessment hearing the Adams mine site will be rejected?

Mr Raftis: Yes. It barely would pass even with one side. Even if you had the other side of evidence not there, it still looks very flimsy as far as evidence goes. What we found is there is very little evidence. All the evidence we've run into supports the concept that it is a bizarre idea to put waste in a fractured site, because you can't control it. But if you take that information and interpret it differently or exclude large volumes of it, you just build this low-quality case, then it looks palatable but not really very convincing. So I don't think it would ever pass. In fact, there are too many sites that have passed of this type, with better conditions, that are failing now, so this one doesn't have a chance at all, I wouldn't expect.

The Chair: Mr Raftis, thank you very much for your presentation and your effort this afternoon. We appreciate it.

1430

NORTHWATCH

The Chair: The next witness is from Northwatch, Ms Brennain Lloyd. Ms Lloyd, welcome. Thank you for taking the time to be with us.

Ms Brennain Lloyd: Thank you for the time to be here. As you said, my name is Brennain Lloyd. I work

with Northwatch. We're a coalition of community-based environmental groups across northeastern Ontario. We were founded in 1988 to address regional issues. Those are largely issues related to energy conservation, transmission and generation, waste management, water quality, mining, forest management and other land use and resource concerns.

We have gained considerable experience over the last nine years. Somewhat at times to our regret, we've gained considerable experience in various environmental assessment processes or other tribunal processes.

We were a party with our intervention partners, the North Shore Tribal Council and the Union of Ontario Indians, in the class environmental assessment of timber management on crown lands in Ontario, the longest-named and I think the longest-running hearing ever.

We were also party to the demand-supply plan environmental assessment and were very active in the on-the-ground review and discussion of eight different concurrent Ontario Hydro site-specific projects which were unfortunately under review at the same time as the demand-supply plan. We participated in those reviews without any funding and with great difficulty given that the projects were overlapping and cross-cutting with each other as well as with the demand-supply plan.

We also participated with one of our local member groups here in North Bay in terms and conditions negotiations under the Environmental Assessment Act, which resulted in the approval of the landfill here in North Bay. We managed to avoid a hearing, which was the stated interest of the city of North Bay, Northwatch and Nipissing Environmental Watch.

We've also been part of the discussions which could sometimes be described as part of the environmental assessment process, but that might be questionable, with respect to the Adams mine site near Kirkland Lake in Boston township. We were part of those discussions through SWEAP, through SWISC and through whatever acronym Mr McGuinty may generate. We continue to be concerned and active in that discussion.

We've also been party in Ontario Energy Board reviews for the last three years of Ontario Hydro's rate proposals and part of federal reviews for uranium mine tailing decommissioning and a proposal to dispose of high-level radioactive waste here in the Canadian Shield in northern Ontario. So we do have some experience and have both gained some insight and developed concerns over the years.

I hope that we would have agreement with members of this committee on what's needed in environmental legislation. Those areas that we would identify as necessary in a process respect are: It must be clear, it must be predictable, it must be a transparent process that ensures that proponents know what is required, the public has clear rights to be involved and to affect the process and the responsible agency, in this case the environmental assessment branch, knows and meets its obligations and responsibilities.

The second thing I hope we would all agree on is that we want protection of the environment, we want an avoidance of environmental harm and we want the most appropriate methods to be used and social and economic

benefits to be achieved in conjunction with environmental care.

Certainly the third area I hope we would have agreement on is with respect to the public and the public role and the need for public confidence in the environmental assessment process and the results of that process, as well as each stage of the process that we would be engaged in. I would expect that the public would be engaged in every stage of the process.

Since 1988 the Environmental Assessment Act in Ontario has been open. It's been subject to review, to lengthy discussion. We had identified four important areas for improvement; four important changes were needed.

We needed greater certainty with respect to pre-hearing consultation, including pre-document consultation. We needed a greater level of certainty and a higher level of direction to the proponent in terms of how the public was to be engaged — not simply notified but engaged. That included the need to provide participant funding, to at least a limited degree, in the very early stages.

We also needed increased accountability from the environmental assessment branch. That has been a recurring problem through the years. I could offer you examples of that, particularly with respect to some of Ontario Hydro's projects, but I'll leave it at that for now and just say there has been a lack of accountability and due diligence from the environmental assessment branch.

We needed increased access for citizens and an emphasis on the public role in hearings. I suggest what we need is to flip those roles. We have to have lawyers, we have to have technical and expert assistance when we are participating in hearings or pre-hearing stages as citizens, as members of the public, but their role should be to assist us. Too often in environmental assessment hearings, and I think largely because of the way the procedural rules are written and even the way the Intervenor Funding Project Act was written, the emphasis and the power and control go to the lawyers and consultants, and the citizens are left chasing after the people who are to be working for them. We needed to find some ways to flip that.

We also needed the provision of intervenor funding for the full process, and that needed to be entrenched in the act.

Those are the four changes we needed. We look at Bill 76 and we look for those changes, and they are all absent. We see none of those changes have been achieved through this bill. That gives us some concern.

We have additional concerns with Bill 76. Our key concern is the introduction of extremely escalated levels of discretion for the minister and ministry staff. We have increased uncertainty and reduced predictability with the process. The act, as it's now presented in Bill 76, could be used to provide an environmental assessment process which was adequate, comparable to the level of assessment that we get with the current act. Again, on the other hand, it could be used to reduce access, to reduce accountability and ultimately then to reduce environmental protection. That is largely because of the discretionary nature of the act.

Bill 76 appears to be part of a regrettable trend we see right now in the last eight months or a year in legislation affecting the environment. I'll give some examples of that.

Bill 26 saw the Mining Act changed to have closure plans no longer requiring government review and approval. Financial assurance is no longer required as part of each mine operation beginning. Bill 26 also removed 80% of the requirement for land use and work permits on crown lands.

Bill 57 introduces a permit by rule. I know that act has not yet come to committee, but at first review it appears to introduce a permit by rule similar to that which would have been provided by the federal regulatory efficiency legislation, which provides inconsistency and discontinuity and some disadvantages for certain proponents.

We also see the changes in landfill standards, which at a technical level may be sound, but again it's the number of exemptions and the discretionary nature of the landfill standards that are problematic.

We look at Bill 76 in the context of these overall environmental changes, and overall the picture is fairly bleak.

I want to make comments on only five areas. Certainly there are more that warrant comment, but in the interests of keeping some time for questions, I'm going to try and limit that.

The first area I want to comment on is the level of discretion, which I've already referred to. There are numerous examples of this increased level of discretion on the part of minister and ministry staff: sections 3, 6, 6(4), 8, 11.2, 11.3, 14(3), 15(1). Perhaps you can get the transcripts and look for more detail on that.

I'm going to comment on only two of those at this point. One is 3.2(1), the matter of a declaration, where the minister may fully negate all the provisions of the act, by our reading, through the declaratory powers provided in section 3.2. I would just note that the Ministry of Natural Resources, by our understanding on the basis of discussions with the Minister of Natural Resources, is awaiting this change to the Environmental Assessment Act in order to seek an exemption from the class environmental assessment and its terms and conditions on timber management. We find that very problematic. That was 12 years of hard work and a lot of public dollars and a lot of public participation, as well as the part of the government, and that's extremely problematic.

The other example I'll give you of discretionary powers which are just absolutely unacceptable is 6.2(3), and 6.2(3) states, "The approved terms of reference may provide that the environmental assessment consist of information other than that required by subsection (2)." Subsection 6.2(2), as I'm sure you're all aware, is the section which replaces subsection 5(3) in the last act. This is the heart and soul of the Environmental Assessment Act. There's a discretionary power built in here, in section 6.2(3), that allows that heart and soul to be fully negated. We have a number of other concerns, and some of those will come up in our discussion of terms of reference, but I would say that the deleting of section 6.2(3) would go a considerable distance towards retiring some of those concerns.

The second area I want to comment on is with respect to the terms of reference. We're not in principle at odds with this. What we trust the section is trying to achieve could make a positive contribution to the process, and in fact there are some similarities to practices that have already been in use. The scoping process, which happens at the beginning of every hearing, in the Megisan Lake environmental assessment process, as an example, provided a draft plan of the environmental assessment document before they went to full writing of the document. We think that's what the terms of reference are trying to achieve: greater front-end clarification, process efficiency and an earlier identification of the issues. We think that's positive.

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But there are some significant problems with the terms of reference as they are constituted or proposed in Bill 76. The first is that there's no public involvement at the front end. The minister claims that this act is going to give us greater public involvement at all stages of the environmental assessment process. That's simply not true, and it's certainly not true in the terms of reference. The public are absent until after the fact. The public are only afforded any opportunity, as I read Bill 76, by a 28-day notification on the Environmental Bill of Rights registry. That's simply inadequate. There's no public involvement at the front end, the EBR notice is inadequate and the terms of reference establish paramountcy over subsection 6.2(2), which I've already mentioned. That's perhaps the most serious problem in this bill.

The third area I want to comment on is the public role. As I've already said, there's an absence from the front end of the terms of reference. Section 6.1 is the first opportunity I see that there should be a definition. One of the absences is of a definition of who the interested public or the involved public should be. I would offer to you the definition from the Ministry of Environment policy manual 030501, which said that affected parties are "any members of the public or public interest groups with an interest in the undertaking or the long-term solution as well as government reviewers and the EA adviser." I would really ask that you insert a clear definition of "the public" and "the public interest" in order to ensure an appropriate window into this process for the public.

Subsection 6.3(2) is the amendment or withdrawal. Another failure here is that subsection 6.3(2) clarifies that there can be withdrawal and resubmission or amendment of an environmental assessment document of the undertaking, but what's lacking there is a statement that after that has taken place there will then be public consultation on the amended version.

Another correction that I would urge upon you is in the discussion of mediation, subsection 8(5). There is a statement that mediation sessions will be closed. While the logic of that is not lost on me — I understand that sometimes mediation and negotiations fare better behind closed doors — given the absence of a clear provision of a public role and public access to the process, having that closed-door statement at that point in the act is very problematic. That could be remedied by establishing that there is a public role in the mediation or the alternative

dispute resolution process, which might be a preferable avenue for you to take rather than mediation. But there needs to be, again, that public role established.

Another area that's absent is intervenor funding. It does note that the mediators will be provided with funding, but there is no mention in the act of intervenor funding being provided for the public. I would suggest to you that this public funding needs to come from the proponent. A variety of mechanisms are available to establish that fund, but clearly there has to be intervenor funding available for the public at all stages of the environmental assessment process.

The last area I'll comment on in terms of the public role is section 37, where it discusses the notice requirements. What's very absent from this section is any notice to first nations, the need to give them notice. We have municipalities, we have townships, we have counties, but there is no mention of first nations and the requirement to provide them with adequate notice.

In general, this section needs to be strengthened. The goal here is to go to the public and to engage the public. It's not simply to get off the hook of the notice requirements of the act; it's to engage the public, involve the public, have the best process, the best decision and the least conflict at the end of the day as is possible. We have to look for ways to establish in the act that the public is going to be engaged.

I think an improved notice system would be an important contribution to that, and that has to include going to where the public is. It's putting notices in post offices, community centres, weekly papers, residential papers, publications and so on. It's going to where the public is, it's engaging them; it's not simply providing minimal notice.

The fourth area I want to comment on is harmonization. This is a crucial discussion which I think has been somewhat hurried in this act. The harmonization section fails to establish that the process, once harmonized, will meet the standards of the Ontario act. There is a question there of whether we're going to the floor or whether we're going to the ceiling. At present, under the current Environmental Assessment Act, Ontario has, I believe, the best environmental assessment process in the country. The federal process is considerably weaker on a number of counts. The federal process simply doesn't meet the Ontario standards. We're right now engaged in the high-level waste review, which is a joint program; it was intended to meet the standards of the act and it doesn't.

One of the areas where there are significant differences is around the right to test evidence. Under the federal process we don't have any rights of cross-examination; there's not an interrogatory process where you can file questions and the proponent is required to answer you. There are no procedures established for the distribution of documents, information. No procedural safeguards are in place. It's very much a catch-as-catch-can process at the federal level. I think we would be losing too much if we were not to insert in this act that any joint processes must meet the standards of the Ontario act and safeguard our Ontario legislation.

In closing, I want to emphasize the paramountcy of subsection 6.2(2) of the Environmental Assessment Act,

where it is required to establish the need, the rationale, examine the alternatives, alternative methods of carrying out the undertaking, examine environmental impacts, mitigative measures and so on. The paramountcy of that section of the Environmental Assessment Act must be maintained. That requires a deleting of 6.3(3) here and it also requires amendment of the terms of reference discussion and perhaps some other minor amendments throughout the act. That is the heart and the soul of the act and it must be retained, and only in retaining that section in its entirety can the Environmental Assessment Act be said to provide a full environmental assessment, as we expect and have been promised in Ontario by not only the government but the opposition parties and the last three governments in power.

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Mrs Munro: Thank you for your presentation. I wonder if you'd comment on an area that really has received a lot of attention in the hearings. We've heard from many people, those representing both sides of the fence, so to speak, on this issue, about the need for establishing a level playing field, the need to have public input, the question of the focus of experts, the question of who has experts, who brings them to the table and the views they appear to be justifying. I just wondered if you would comment, because you did refer to the need for public input and the concern over the terms of reference, on whether you think that agreement could be reached at the level of the terms of reference regarding the technical support for a project.

Ms Lloyd: I think what we need in the environmental assessment process is an ability to test the evidence, an ability to test the proposal being made, not to test it for a result of negativity or from a perspective of negativity, but with the objective of certainty. We need to be able to test what the proponent is proposing, the basis for their statements, the basis for their conclusions, and that has to be done with some independent and third-party review.

There are different approaches that can be taken. For example, in the Ontario Energy Board process the board staff play a much larger role than do the staff in the environmental assessment process. That's a possibility that could be looked at; I think it's too late in the day for looking at it for this revision of the act. But what we need is publicly driven, citizen-directed review and critique of the proposals being put forward, and that can really only be done with the expert assistance, for which we need intervenor funding.

Mrs Munro: So you don't believe there is a place to find a group that can provide this at the beginning of the process?

Ms Lloyd: I think there's potential to agree on some common witnesses or common experts to the process. There is potential for that, but I think we have to have third-party, independent review in addition to that. It might be helpful, though, particularly at the very early stages of the process, to have some independent review which both the proponent and the public interest parties agree to. That might be helpful.

Mrs Munro: Which is my question.

Ms Lloyd: Sure, that might be helpful — not to the exclusion of independent testing of the evidence at later stages, though.

Mr Gravelle: Thank you, Ms Lloyd, for a very thorough presentation. There's a number of areas we can get into, but I want to focus on a point you made that was almost a side point in reference to the Ministry of Natural Resources. That was a reference to section 3.2 in the new bill that would allow the MNR to be exempt from class environmental assessment. This came up yesterday, by the way — the Sierra Club made reference to this — and we've asked the government for more information on this. First, where did you hear it? I'm curious about where you got the information yourself. Second, what repercussions of that do you see if indeed they went for that exemption, and what exactly does it mean for those people who aren't familiar with what its implications would be?

Ms Lloyd: I heard it from the Ministry of Natural Resources. They called, seeking a meeting with North-watch to discuss the terms and conditions and implementation of the terms and conditions or lack thereof. There were two calls. The first call was seeking a meeting time in August; the second time was suggesting that we defer the meeting until September. They made some references to Bill 76 as if that would change the picture. I asked why they thought Bill 76 would change the picture and the response was, "There would be new abilities to make declarations under the revised Environmental Assessment Act." I said, "You're seeking an exemption then under the new language of Bill 76," and they said yes. That's why I have that impression; I think for fairly good reason.

Mr Gravelle: A ministry official told you that?

Ms Lloyd: That's right. I think the ramifications of that are that we will lose the benefits of the longest-running environmental assessment in Ontario. I think we all learned a lot from that process. I don't believe we ever have to have an environmental assessment that goes on at that length again, but now, since we've gone through that, we have terms and conditions, which weren't as strong as we had hoped but were certainly stronger than the ministry's planning procedures prior to the class EA hearing. We would lose those, so we would lose all of the forward motion in the Ministry of Natural Resources that came as a result of those 12 years of preparation and five years of hearings.

The areas of particular concern to us are around condition 77 in allocation of resources to first nation communities; and around the requirement to implement wildlife protective measures; roadless areas policies; complete and implement the revised Forest Management Planning Manual, and so on. The losses are going to be significant. So what we'll lose are 12 years of work.

Ms Churley: Thank you for your presentation. You're very knowledgeable about the process. You've obviously been through a few things.

I was going to follow up on that as well. Mr Gravelle actually put forward a question about that and the answer back was, "No, the Ministry of Environment and Energy has not received a formal request from the Ministry of Natural Resources to exempt them from following their approved class environmental assessment parent documents." Their answer at this point is that they haven't formally requested anything. But it's true that you're the second one, and I had heard it myself as well.

Mr Gravelle: "Formally" is the important word I hear. **Ms Churley:** Yes, "formally" is the important word there, as Mr Gravelle points out. It's something that we clearly need to keep an eye on and try to prevent that from happening.

I agree with your points, and I've made them myself. I wanted to get perhaps to a more philosophical question rather than going into the details, because I think by now — we're hearing the same thing from most community groups and environmental groups, environmental lawyers, and on the different approaches from proponents and often municipalities. From my own experience in the environmental movement before — I was called by a government member today "one of those tree-huggers," and I suppose it's true. I got involved in politics through my environmental citizen activities.

My question is around this adversarial situation we have. There always seems to be a feeling that citizens are just a pain in the ass: "We have to include them, but they often get in the way." In some cases, although some proponents and some government agencies are better than others, it's, "Let's do the minimum and see how much we can get away with here." You often hear that intervenor funding is often misused and wasted. Of course, we've had situations pointed out to us where, if it weren't for citizens and intervenor funding, crucial information would have been lacking.

I would like to know if you have any ideas about what we need to do or what the communities need to do to prove, to show that they should have equal rights and that you have equal interest to make sure the environment is protected, that it's not just economic interests we're looking at. It's just a frustrating problem that seems to continue.

Ms Lloyd: I wouldn't expect at this point that we have to prove that the public has rights or should have access. When you look at the Honourable Brenda Elliott's comments in the House and the releases issued by the minister, certainly they speak in loud volumes. They claim that the act will provide that public access, public involvement. The difficulty isn't in proving that there should be a public role; the minister at least would like us to believe that she believes that too. I don't think that's a problem. The problem is making the process predictable, consistent, accountable, transparent, open, and all of those things.

I don't think it's inherent in the process that it has to be adversarial, aside from the legal terminology of adversarial versus inquisitorial, where I would favour an adversarial process, which is what we have in Ontario, versus the federal process where you can't actually ask a question directly of anyone.

Certainly in North Bay I would say the process we went through to arrive at an agreement around the landfill and its approval was not an adversarial process. As I recall, there was one meeting that had an adversarial element in it, and that was when both the local environmental group and the local government had outside lawyers, and they came in and they were prepared to escalate. We didn't want that, I know the city didn't want it, and we were able to avoid that.

I think that's evidence that the process can work, that it has worked, that it is not inherently adversarial, but you have to have a proponent who is accountable and who is fully cognizant that if they do not behave in a responsible and respectful way through the environmental assessment process, they will end up at a hearing and that does have the potential to cost them more and be more adversarial and so on. The opportunity is there.

The Chair: Ms Lloyd, I'm sorry, our time has expired. Thank you very much for joining us this afternoon and sharing your experience and your views with us.

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RAIL HAUL NORTH COALITION

The Chair: Next we have the Rail Haul North Coalition. Mr Glenn King is a member of that coalition. Welcome this afternoon.

Mr Glenn King: Good afternoon, Mr Patten and committee members. My name is Glenn King. I am the secretary of the Ontario legislative board for the United Transportation Union. Our office represents over 3,000 rail conductors, train men and bus operators in the province of Ontario. Today I am here speaking on behalf of all the workers, under all of the railway union locals, for Ontario Northland. I will also speak for the entire labour force employed by the Ontario Northland Transportation Commission.

Rail Haul North is a unique group of organizations that came together in 1992 to examine the environmental and economic aspects that surrounded the movement of solid waste to northern Ontario by rail, specifically to the former Adams mine site near Kirkland Lake. This coalition was initiated by the unions representing the workers at the ONR and is composed of a broad-based community membership led by the mayor and council of the city of North Bay in concert with 16 union locals and the North Bay and District Chamber of Commerce.

You will hear, through the Northeastern Ontario Municipalities Action Group, the opinions of our municipal partners on this bill and its potential impacts on the province, specifically the north. It is important that this committee, having come to North Bay, understand the history and background to our presentation.

I will deal today with aspects of your proposed bill from a labour perspective. Based on the immediate need for new economic opportunities in this province, it is time to stop the ongoing political debate and continual delays in approving environmentally sound projects that may benefit the economy of the north and the province of Ontario. That seems to be the intent of your changes, but will they actually happen?

This committee must understand that, for our unions, appearing before this committee is a repeat performance on the issue of approving landfills in Ontario. In 1989 our company, the Ontario Northland Transportation Commission, identified the movement of waste to the north as an economic opportunity if environmentally sound sites could be found. In 1990, the Liberal government and the greater Toronto area municipalities issued a request for proposals for solutions to handle waste disposal for the long term. The company worked with

Canadian National and Notre Development Corp on a proposal to move waste to the north by rail, to the Adams mine near Kirkland Lake. The proposal emerged from the 1990 process as the only serious contender.

What happened to this environmentally sound and economic opportunity for the province and the north? We had a change of government, we had a change of policy on waste management, we had public hearings like this one, on a bill called Bill 143 instead of Bill 76, and we had changes to the Environmental Assessment Act. Those changes ruled out a viable option that over 90% of the people who deputed before a committee similar to this felt should be looked at. That government move probably cost our company over 100 jobs. Those jobs may have been saved if the rail-haul of solid waste to the north had been allowed to proceed in 1990.

Our unions submitted briefs to those hearings, much as we are doing today. I think it extremely important for this committee to know that we are consistent in our approach to the environment and the issues surrounding any amendments to the EA act. We support the disposal of waste in the north, but only to environmentally sound sites.

We are pleased that the work completed in 1995 by Metro Toronto and the ongoing approval process being undertaken by Notre Development, Ontario Northland and CN continue to show that the site can be developed in an environmentally sound manner, and we look forward to the final EA approvals.

I would like to make this committee aware of the consistency of our position. These were some of our key statements made to the government in 1992:

"Let us not forget that sustainable development, an important catchphrase for the 1990s, contains two elements. Economic development that is environmentally sustainable should not be constrained without good reason. Ontario's north is severely depressed and in need of economic revitalization. The GTA is experiencing a serious waste disposal issue. If an environmentally acceptable project can be found that will assist both of these constituencies then the Ontario government is surely obligated to give it careful consideration."

This was a summary statement of a position paper completed in 1992 by Mr Peter Davidson for the Brotherhood of Maintenance of Way Employees from their national office in Ottawa.

Mr Craig Kemp, representing the rail division of the Canadian Auto Workers, Local 103, and an employee of Ontario Northland, stated:

"The concept of waste long-haul by rail has already been proven at Seattle, Washington. That is why we cannot sit back and hope good sense will eventually break through the crust of stale philosophy being fed us in the name of mother earth. Environmental concerns affect us all and are no longer the domain of self-proclaimed crusaders. The issue of municipal waste demands responsible action from responsible parties. Part of the solution is before us today. For that we can be thankful that intelligence is being used to develop a better answer."

Members of the committee, that was 1992. This is now 1996. Our concern and frustration is that here we are four

years later and these same statements are as true today as they were in 1992. We are before another standing committee looking at the same issue. That issue is the need to develop an effective approval process for landfills in the province of Ontario that is, first, environmentally safe, and second, one that can be economically effective.

The credibility of our proposals and comments to you today comes from the sustainability of our group and our position on these issues that represents municipalities, labour and business. We present a united front. We have not changed our position. The facts since 1992 have only become clearer to support these positions we bring to you for consideration.

Our review of Bill 76 is based on the need for effective decision-making and streamlining of a process to approve the environmental assessment process but not negate the input of all interested parties that have valid positions. It must allow solutions that are sustainable to become operational as soon as possible, so our economy can move forward. Therefore, we make the following comments:

From a labour perspective and a social point of view, we believe that mandatory public consultation is an important aspect to include in the legislation, and we support its inclusion.

We have a concern that the ongoing emphasis on a proponent having to spend extensive time and resources to review all alternatives remains a costly and unnecessary exercise. For example, in the case of rail versus truck, all the information is available. On long hauls, rail is clearly the best environmental option, so why should such a proponent have to produce new data when the information is already available?

Similarly, from a rail perspective, we believe that any proponent that wants to use rail systems for the movement of solid waste should not have to undergo an EA process on the use of our rail system. Our railways are licensed to carry many commodities far more dangerous than non-hazardous solid waste, and this type of requirement, if included in a proponent's responsibilities to gain approval, are unnecessary and redundant. Other customers of our rail services are not required to conduct such an analysis, so why should a solid waste customer?

Based on our earlier comments on environmental activism and political interference as a result of government changes, we believe the terms of reference should be binding on all parties once they have been accepted by the minister. This would include a board hearing and ministry staff. If the government changes in the middle of the approval process, why should a good project be relegated to the back burner as was the rail-haul option in 1990?

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Our unions and our coalition of business and municipalities believe that "Ontario first" solutions for waste management must be a priority in any approval process. This is not mentioned anywhere in the bill.

Our unions have deputed to Metro Toronto on many occasions since 1990. We are extremely concerned that this approval process does not require Metro, as the generator of the largest volume of municipal waste in Ontario, to conduct an environmental assessment of the

impacts of shipping its waste to the United States. We find it completely unacceptable that this government would, in its proposed reforms to the environmental assessment process, not make a provision that would require a municipality like Metro Toronto or other greater Toronto area regions to conduct a review of the Ontario alternatives before they are allowed to ship waste to the United States.

This government has made a strong statement about the creation of jobs in Ontario being a priority. I understand that even the Ontario Waste Management Association, representing the private sector landfill operators in Ontario, says that there is nothing in this bill that will prevent the solid waste from Ontario to continue to move to the United States.

Our unions, on behalf of the rail employees at Ontario Northland and Canadian National, are calling for the government to develop and include an amendment to this bill that would require Metro Toronto to conduct a full economic and environmental analysis on in-Ontario solutions versus cross-border shipping of municipal solid waste before signing any municipal waste export contract.

We believe that this amendment should form part of section 6.2, where proponents are required to provide a rationale for their undertaking. Metro Toronto, or any other large generator of waste, is the real proponent if it decides to ship its waste to the United States. They should not be allowed to contract out movement of this waste to the United States without providing the Environmental Assessment Board the opportunity to rule on its impact to the taxpayers, the workers and the environmental security of Ontario.

We are making clear that we are not attempting to interfere with a situation where there may not be acceptable options in Ontario. We are not advocating closure of the border. However, if there are alternatives in Ontario, and we believe there are, this government has a responsibility to the environment and the workers of this province to ensure a landfill industry, economic investment and job creation are developed and remain in Ontario.

Our company and our employees are being downsized by this government's austerity programs. We are a crown corporation and, in effect, each member of this committee has a say in what happens to our company, specifically the ones on the government side. The government has eliminated our air service in the north and our management has laid off over 300 workers at Ontario Northland.

The government is asking Ontario Northland to operate like a business. The government must then allow us to compete on a level playing field for the largest single contract available to us: the movement of Metro Toronto's solid waste to the north.

If you fail to ensure this bill provides for an evaluation of the potential negative impacts of shipping waste to the United States before it happens, you will not be providing the opportunity for our company and others to invest in this province. You will not allow us to develop environmental solutions and economic opportunities in Ontario, specifically the north. As important, you will be contributing to the financial instability of a company which the taxpayers of Ontario own, all because you will be condoning the shipment of municipal waste to the United States when we can do the job here in Ontario.

Thank you for the opportunity to appear before your committee today.

Mr Dalton McGuinty: Thank you very much, Mr King, for a very interesting presentation. You described for us some of the frustrations and difficulties that you have encountered to date and I guess on a broader scale some of the challenges facing the north in terms of economic diversification and trying to exploit opportunities that are viable.

Your proposal that there be an amendment to Bill 76 to effectively require that, as part of the environmental assessment, consideration be given to the economic impact and the environmental impact of shipping garbage or waste outside of the province, on the face of it, I've got to tell you I'm very much attracted to that; it's very easy. Anybody who understands anything about the environment understands that emissions and noxious substances don't respect jurisdictional boundaries. We may ship it to the States and end up breathing it some months later.

I'm not sure what I have in terms of a question for you, but in terms of this particular proposal, first of all, do you have confidence — this is a question I asked someone earlier — in the environmental assessment process in existing legislation; in other words, that they will give full consideration to this proposal?

Mr King: Yes, I do. I feel your staff is very competent on the ministry level.

Mr Dalton McGuinty: Their staff.

Mr King: I have full support for those people. I've talked to them on various occasions. I think they're between a rock and a hard place sometimes.

Mr Dalton McGuinty: We've come up here to discuss Bill 76, but obviously an issue that's of interest to many people here is this Adams mine site proposal. But I'm not sure anybody's telling me that at the end of the day, if this was submitted to a full environmental assessment, a complete hearing, it seems to me that everybody has confidence that the right decision's going to be made.

Mr King: I'll put it to you in this perspective. When we started on this initiative back in about 1991 — and this was a very contentious issue for our membership, the movement of solid waste, pollution, all the environmental concerns — we agreed at the time that when all the studying was done, if this site was not environmentally sound, we were not in favour of it, and we have always maintained that.

We are not here to say that we want solid waste dumped anywhere that is not a suitable site. I'm not an environmentalist. I'm a railroader, I'm a rail conductor at Ontario Northland, with due regard for the environment. But when a proponent goes out and spends the millions of dollars that they are to hire a reputable consultant and he comes back and says, "Yes, these are the signals that point to a suitable site," I think we should be listening to it. There are numerous suitable consultants being used in this province, and for somebody to fly out of the woodwork and say, "No, that guy's not reputable," without even having to substantiate themselves, and that's what I get out of the limited involvement I've had in this process, it bothers me.

Mr Dalton McGuinty: If the net result of a full hearing, a full environmental assessment, was that this was not a suitable site, you would accept that?

Mr King: And so be it. I'll take my engine and go home.

Ms Churley: I wonder how familiar you are with the bill that we're looking at today. I don't want to ask you questions about parts of it if you're —

Mr King: I'm not a fluent lawyer on this bill, Ms Churley, no. I've been through it and there are questions that I have and I've asked them.

Ms Churley: I ask that simply because you focused your presentation on the frustrations to date, and I just wasn't sure; I wanted to clarify first. So you're aware of some of the aspects of the new bill and how it would impact perhaps on a hearing, should there be one.

Mr King: Yes.

Ms Churley: We had some folks earlier today, and I'm sure you know some of them, Mr Raftis and others, who talked about some possible adverse environmental impacts that they feel need to be very carefully looked at during an environmental assessment hearing. I guess my question is, and you've partially answered it, that if indeed it turns out to be a bad environmental site, then you would, as you put it, pick up your train and go home.

Mr King: That's right.

Ms Churley: I guess what I'm asking you is that there are concerns by citizens' groups who have different opinions, and that's fair, who feel that under this bill as it is now, for instance, they won't be involved, or won't necessarily be involved, because it's not in the bill, in the very beginning of the process. That's the terms of reference, the negotiation around what goes into the hearing. Do you feel that people, even yourselves, would be better served if everybody who has concerns about this site be involved in the early stage?

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Mr King: I feel so, yes. You have to involve the public and the affected parties. I fully support that, but what bothers me out of this whole EA process is that the longer it goes on, we start reverting to what I call terrorism. In the public consultation committee meetings that are held in the host communities, it's very frustrating for me to see my fellow workers and people of their community intimidated to come out and speak in support of an issue like this because people might not go to their business or they have other interests within the communities. This is very frustrating. I don't think people should be intimidated by a process like that and I don't think that people from southern Ontario should be coming up here on a bus and trying to run things. That's what causes the problems in northern Ontario and that's where we have concerns about the intervenor funding and how it's being used.

Ms Churley: So you would support intervenor funding but you would want some guidelines around it so that the community can use that money for expert witnesses and lawyers.

Mr King: Yes.

Ms Churley: I'm not quite sure what you mean by people coming up.

Mr King: They import them here, Ms Churley. If there's an issue that comes to light, like Temagami —

Ms Churley: But intervenor funding doesn't cover that.

Mr King: No.

Ms Churley: That's what I wanted to clarify.

Mr King: This is what causes the problem in the process. The process has to be streamlined with your terms of reference, and keep it on track. It gets blown way out of proportion here.

Ms Churley: But to be clear, intervenor funding — that's what I'm trying to clarify — did not fund people to come up —

Mr King: No. Well, I don't know if it did or not.

Ms Churley: I don't think so.

Mr King: I can only say I would not hope so, as a taxpayer.

Ms Churley: Exactly. It was meant to fund expert witnesses, lawyers. So you would support legitimate costs of intervenor funding so citizens' groups, no matter which side they're on, have equal access.

Mr King: Yes. You have to have that. We have some very good people in our communities in northern Ontario who are intimidated right now and afraid to become involved in this project for the ramifications. So be it. But if they had an opportunity to come out on a level playing field, I think we'd see a much different picture.

Mrs Ross: Good afternoon, Mr King. I see by your business card that you're from Hamilton.

Mr King: No, I live in North Bay. I'm a provincial union representative.

Mrs Ross: Okay. Hamilton's my home town.

Mr King: Is that right? I'm down there quite often, about two weeks a month.

Mrs Ross: Unlike some people, I'm new to this Environmental Assessment Act and learning a lot through these hearings, and that's the whole purpose of this hearing, so that the government can take the input we're receiving and try to form a piece of legislation that's balanced for both sides.

I'm particularly interested in the comment you made about proponents bringing forward experts. You said something to the effect that when a proponent spends a substantial amount of money to bring forward experts, you believe people really should listen to those experts. We've heard from a lot of proponents and very reputable firms across this province, and indeed the country, who have said they believe public consultation at the very beginning stages is critical to the success of their projects.

Mr King: Most definitely.

Mrs Ross: So I just really want to talk to you about that and get your feeling. We hear from the other side that proponents will hire consultants basically to say what they want them to say. I'd just like to get some comments from you.

Mr King: I don't really think that's a credible statement. If I was a consultant, I'd have a great deal of concern if somebody was sitting here and saying that. I think that's pretty slanderous. When you have a business that deals in those issues, they're regulated and they're

under scrutiny. I don't think they're looking to put themselves behind the eight ball.

Mrs Ross: I think your point was very well made, and certainly other members have commented on the same thing, that it's in the proponent's best interests to ensure they have the best public consultation they can get and the best experts they can get. I think one of the presenters earlier this afternoon made the comment that otherwise it's going to cost them a great deal of money at the end of the process and they want to avoid that as best they can.

Mr King: Exactly.

Mrs Ross: I just want to thank you very much for your presentation.

Mr Galt: I might just for a quick second put on the record the fact, from the previous speaker in connection with high-level waste or radioactive waste being a provincial-federal issue, that this is purely a federal issue, not a joint issue.

It's interesting, your presentation, being from a union, and your comments and looking at it from the direction you are. Congratulations for doing that.

Given your experience with the Environmental Assessment Act process and where you are now, if Bill 76 was in place, do you think you would have accomplished and would have established whether it's environmentally safe? The fact that this has gone on for so long — you still don't know whether it's environmentally safe. It's just been going through an exercise of process and paperwork, which is what we're trying to get away from. Do you think you would have arrived at that point now if Bill 76 had gone into place back in the early 1990s?

Mr King: I think we would have, because every time we turn around we're reinventing the wheel here. We're still spinning our wheels on this issue five or six years later. I think, like I said before, clear terms of reference: That's your guidelines. Once they're entrenched, it should move forward.

Mr Galt: It's obvious from being up here, seeing that this issue is divisive — it's not surprising. Do you think this would be less confrontational if you were working with Bill 76 as part of the act?

Mr King: I think it would have been, because to my way of thinking there would have been a much more efficient consultation process instead of just throwing millions of dollars out in the community and letting it fly.

Mr Galt: Your comments about them coming up from southern Ontario to assist with this divisiveness and confrontationalism: Do you think there would be less of that if Bill 76 was in place, or would that make any difference? Would they come up anyway?

Mr King: Sir, I live and work here; I live in North Bay. I only commute down there at various times. But I've worked a lot up north, I've worked in all the communities over my 18 years, and all the guys I work with are my friends. I'll tell you, today they still do not know, some of them, the whole ins and outs of what's going on here. They come to me and say: "Look, is this really going to work? Can we do this environmentally? Look at what we're reading in the paper." I say, "Look, when you see the facts from the environmental assessment, that speaks for itself."

Mr Galt: The sizzle sells better than the steak.

Mr King: Exactly.

The Chair: Thank you, Mr King, for your presentation. We appreciate your being with us today and sharing your views.

TEMISKAMING FEDERATION OF AGRICULTURE

The Chair: The next group is the Temiskaming Federation of Agriculture, Mr Vanthof and Mr Struthers. Welcome. We have distributed your document to all the members here, and please proceed.

Mr Gary Struthers: Thank you very much, Mr Chairman. First of all, my congratulations to you for running such an efficient show here. You're ahead of schedule. They used to rely on train service and it didn't have quite the same record, so you're impressing me.

My name is Gary Struthers. I'm the secretary-treasurer of the Temiskaming Federation of Agriculture. Our second vice-president, John Vanthof, who worked a great deal of time last year in the public liaison committee process dealing with the Adams mine, would have liked to be here, but he had to go to Toronto yesterday to pick up his daughter, who was returning from Holland. He's spending a few days in southern Ontario, so I'm here speaking sort of on his behalf.

The TFA has close to 300 farmer members in Timiskaming and is an affiliate of the Ontario Federation of Agriculture, the province's largest general farm organization, with more than 35,000 members. We welcome this opportunity to present the views and opinions of our farming community in Timiskaming on such an important topic as the environment and its protection.

Until last spring, 1995, the farmers of Timiskaming would probably not have taken such a keen interest in the province's Environmental Assessment Act. It was at that time that proponents of the former Adams mine as a waste disposal site near Kirkland Lake became active and the potential dangers of such an undertaking became increasingly obvious to the officials of the TFA and the farming community in Timiskaming.

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Throughout the balance of 1995, the TFA played an active role on the public liaison committee established by Metro Toronto. I'll just move away from the text here and mention to you that Mr Vanthof has four young children in his family, ages 3 to 8. His young children grew to hate me, I think, because it was always me who came to pick John up to take him to meetings, so I was the guy who kept taking their father away on them. We spent a lot of time at PLC meetings and related meetings last year.

Initially, there wasn't a seat at the PLC table for the TFA or any representative of the large agricultural community in Timiskaming. We produce gross annual sales of some \$30 million a year from the farms in Timiskaming and we rely to a great extent on the clean source of water that we currently have from our wells. Metro Toronto later realized the oversight and invited the TFA to participate on the PLC. As the review of the proposal on the related data proceeded, more and more questions were raised by the TFA about the overall safety

of the project and the impact an operational failure could have on the underground supply for the district's farmers and indeed all who depend on groundwater for their supply of drinking water.

While some attempts were made to answer the TFA's questions, many still remain unanswered and doors appear to be closing on opportunities to repose those questions and get meaningful answers from the current proponent. With reference to a statement by the Honourable Brenda Elliott, Minister of Environment and Energy, to the Ontario Legislature on June 13, 1996, the TFA is pleased to see that, "The public's right to a say early on in the process will be enshrined in the legislation." We're happy to see that. As we see the route being taken by Notre Development Corp and its partners, current proponents of the Adams mine site as a waste disposal area, under the name of public consultation, we would recommend that the term "right to a say" be more clearly defined in the act.

Metro Toronto, as proponent, did its best to provide an opportunity for the public to participate. Now, however, there is a process under way whereby the proponent has decided who the participants will be in the consultation process and the boundaries of likely impact from the proposed project. Public participation has been restricted to selected people within an arbitrary boundary.

We are encouraged to see that under the proposed amendments there will be a guarantee of public consultation for all affected parties. Again, however, we would feel more comfortable if there was an opportunity for public input into the determination of "all affected parties," not simply a unilateral decision by a proponent. It would also make a certain amount of sense, in the opinion of the TFA, that there be public input into the establishment of terms of reference for any undertaking, not simply terms that satisfy the proponent and the minister.

Metro Toronto found itself in some difficulty when it attempted to impose its view of terms of reference on the public during its process surrounding the Adams mine proposal. The TFA believes that for a project as massive as the Adams mine proposal, with upwards of 40 million tonnes of garbage to be placed into a fractured rock pit with very limited evidence to support the hydraulic containment theory in such an application, the public should have an opportunity for input at all stages. The public, in such cases, should not be defined by the proponent, but by the potential boundaries of impact, be it direct or indirect.

We support the statement contained in the news release of June 13 from the minister regarding the proposed changes to the act. "Early public access will be guaranteed to ensure proponents consult all affected parties from the earliest stages of the process."

It is encouraging to know that the ministry is preparing to outline new and clarified rules for an environmental assessment. As a participant in the first PLC process for the Adams mine site, the TFA, probably because of its size and affiliation, was given the honour of responses to most of its questions and concerns.

However, we saw countless individuals virtually ignored by the process, advised to document their con-

cerns and bring them to the ministry for later resolution. Most of these individuals were common folk with a home, a family, a job and a mortgage, and after having the door slammed in their faces a few times, simply threw up their arms in frustration and walked away from the process.

Whatever changes are made to the EA act should ensure that individuals, as well as groups and organizations, have their questions and concerns fully explored through the process and at the cost of the proponent.

The TFA also supports such changes as those proposed under "Terms of Reference," 6.2, specifically clause (d), "an evaluation of the advantages and disadvantages to the environment of the undertaking, the alternative methods of carrying out the undertaking and the alternatives to the undertaking."

With regard to changes affecting the Environmental Assessment Board, the TFA is concerned with the proposal that the board would be allowed to hear testimony in respect only of matters specified by the minister. We can understand the benefits to proponents, be they private or municipal, of shortening the time frame in this manner, but we would submit that the value of a clean and safe environment should be much greater than any such savings achieved through this proposed change.

With reference to the June 17, 1996, statement by the Honourable Brenda Elliott to the Ontario Legislature regarding new landfill standards, TFA would like to recommend that abandoned, fractured-rock, open pit mining sites such as the Adams mine near Kirkland Lake be included in the hazardous lands listing, along with floodplains or areas prone to excessive erosion.

The document contains sketches of generic design approaches to landfill design, construction and leachate collection systems. With reference to the proposal at the former Adams mine site, the TFA believes these generic designs cannot be applied.

This site, at its highest point, is well above the altitude of much of the surrounding area of Timiskaming, and at its lowest, the bottom of a 600-foot-deep pit, is equal to about the altitude of the surface of Lake Timiskaming.

In the document Background, Proposed Regulatory Standards for New Landfilling Sites Accepting Non-Hazardous Waste, under the heading "Design Criteria for Groundwater Protection," the statement is made, "Preventing groundwater contamination is particularly important because of the difficulty and cost of restoration."

The TFA is in full agreement with this statement and for that reason has spent considerable time and resources to show that the proximity of the Munro Esker, within two kilometres of the east side of the Adams mine site, poses an unnecessary risk to the groundwater supply for all Timiskaming residents south of the Adams mine site.

Considering the amount of evidence available that sets the Adams mine site apart from just about any other that has been considered for a landfill area, the TFA would like to urge this committee to develop some way of providing intervenor funding for volunteer groups like the TFA, that would allow for adequate study and the development of scientific evidence regarding such unique sites and their potentials.

It hardly seems appropriate that studies commissioned by proponents should be the sole source of information about such sites, but because of the vastness of the proposed development and all its ramifications, volunteer groups like the TFA and concerned individuals have no way of commissioning all the necessary data to allow for a well-rounded review or assessment of the proposed undertaking.

With scientific data from third-party groups completely separate from the proponent or governments, a much more realistic assessment of any proposed undertaking should be possible.

The TFA believes this standing committee should seriously consider adding an amendment to the act that would recognize the democratic rights of citizens. In Timiskaming, the farming community voted 100% in opposition to the Adams mine proposal and a number of municipal councils conducted votes in their towns and townships that indicated between 90% and 95% opposition to the proposal.

As well, the Timiskaming Municipal Association, with 26 member municipalities, has voted against using the former Adams mine as a landfill site.

When proponents ignore such public expression and push on with a proposal, it makes average citizens question the value of living in a democratic society.

The TFA feels this standing committee has an opportunity to restore some public faith in democracy by requiring proponents of undertakings such as the Adams mine landfill development to honour the wishes of the majority of citizens of an area targeted to receive garbage from outside the geographic boundaries of that area.

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I have an additional document that I will file with the committee. It was one that was presented to Metro Toronto on December 13 outlining the various referendums and votes and whatever that took place in the municipalities in Timiskaming.

In summary, I'll just list the ones that we have here: Chamberlain township was 92% opposed; Dack township, 93.75%; Evanturel township, 95% opposed; Dymond township, 93%; Ingram township, 96%; Boston Creek-Round Lake, which is the area immediately surrounding the Adams mine site, was 95%; Englehart didn't take a vote per se, but 407 people in the town signed a letter opposed to the council's willing-host position; Larder Lake had 410 signing a petition opposed to the proposal; as I said, the federation of agriculture and the farmers in Timiskaming were 100% opposed; Kirkland Lake, 59.54%; and one late poll was taken in Hilliard township, and of 149 people polled, 39 didn't respond, 110 responded, with four or 3.64% saying yes, they favoured it, and 106 or 96.36% stating they were opposed to this proposal.

That document more or less states in itself why we make the final recommendation in our presentation that the wishes of the citizens in an area such as Timiskaming, or any area that's targeted to receive waste from outside that area, should be recognized at least by the proponents.

The Chair: We'll pick that up from you and that will be circulated and given to our researchers for consider-

ation as the committee deliberates. Is that the end of your presentation?

Mr Struthers: Yes, it is.

The Chair: We have just a little bit over five minutes for each caucus.

Ms Churley: Thank you, Mr Struthers. I missed the very first part of your presentation, but I read it. I thank you very much for your presentation. You represent a community-based group, in your case farmers who are concerned about the threat to their livelihood and to future generations. I presume what you would like to see in this bill is an absolute guarantee that from the outset it's established that there will be — I'm getting so tired I'm having trouble finding the words, being the lone New Democrat here — a full environmental assessment, including looking at the alternatives to the site, all those things. Some of that may be easily applied by now, because some work has been done, but I assume you would like this bill to guarantee that those things can't be negotiated off the table.

Mr Struthers: Most definitely, yes.

Ms Churley: The other thing that comes out of this is the David and Goliath syndrome that if there is no intervenor funding for people like you — certainly today we've heard different opinions on the possible environmental impacts. I think there are different scientific reports out there and different viewpoints from the proponent and some of the citizens, so there obviously are differences of opinion. I presume as well that you're saying that if you do not, as a citizens' organization, have intervenor funding, then you don't stand a chance in an EA to prove your point or at least attempt to prove your side and what you have found to be environmentally unsound in the structure.

Mr Struthers: That's correct. As an example, we, on a temporary basis, secured the services of a professional for one day. I guess he spent more time than one day reviewing the documentation, but it was in the area of \$3,500 that that service cost us. As a volunteer organization, we don't have access to that sort of funding, so what it meant was we had to go to other agricultural commodity organizations in Timiskaming and to individuals and ask them for donations to help cover the cost of this type of thing. You can't do that very often.

Ms Churley: Do you think this proponent, who presented this morning and seemed to be fairly reasonable in his presentation about public participation — because there's no intervenor funding act any more. We're pressuring the government to bring in something, but I don't know if they'll agree to that or not. Do you think this particular proponent would be willing, if you asked, to give your citizen's group intervenor funding so you can participate on an even keel?

Mr Struthers: I would really doubt it, because the way the process has started off, as I explained in the document, individuals have been selected for public consultation. The rest of the public has been ruled out of the whole process. So I can't see funding coming from the proponent to any outside organization, outside of what that proponent sees as the affected parties. I can't see any funding coming to that organization to get

involved in any way at all. So without legislated intervenor funding, we're lost.

Mr Stewart: A couple of questions, very quick ones: You mentioned a number of the municipalities that were against the proposal, yet as you quoted some of those, I'm looking at the presentation from the Northeastern Ontario Municipalities Action Group, and in some of those communities, their members or the political officials are supportive. Can you tell me why? Has this developed into a bit of a political issue sort of thing?

Mr Struthers: It's a mystery to a lot of us up there to see the vast majority of people within some of those municipalities speaking out in opposition to the proposal while at the same time the politicians they have elected are supporting the proposal. At the time of the elections, the issue wasn't there, so the politicians weren't expected to make any statements as to where they stood on the issue, but then after — the last election was in the fall of 1994 for municipalities. It was in the beginning of 1995 before this really resurfaced again.

Mr Stewart: But this has been going, though, since 1990, I understand, or earlier than that. Nobody wants to get involved.

Mr Struthers: Everyone thought, I guess, that the issue had died and was not to be heard from again. Then all of a sudden it came to the surface once again. The people had elected politicians, and they didn't know where they stood or had failed to ask where they stood on the issue before they elected them.

Mr Stewart: We heard this morning a great speech that we must have — and you were just asked the question — a full environmental hearing on all landfills, yet you have one here in North Bay that didn't go through a full hearing. Do you want to comment on that? I just don't understand how this bill that we're putting through gives flexibility to the possibility of not having one, yet I'm hearing over here that North Bay did not have one a couple of years ago. That's sucking and blowing at the same time. I guess that's my concern.

Mr Struthers: The great concern with this bill, I think, is the fact that exemptions can be granted.

Interjection.

Mr Struthers: Well, whatever, exemptions shouldn't be granted as far as the farming community of Timiskaming is concerned, everyone should be playing at the same level on the field.

Mr Stewart: Should there not be some flexibility, though, do you not feel, in certain instances, that could speed it up and get it done? You look at what you've been talking about here, five, six or seven years; we heard one this morning, 13 years; another one 10. We've got to do something about this to get it done, to protect the environment and get it done in a hurry. Not in a hurry, but —

Mr Struthers: As was stated earlier today, perhaps general terms of reference can be established and more specific terms of reference for specific sites. Such things as what took place in North Bay could be dealt with in the terms of reference for the North Bay situation, but I'd hate to see that situation applied to other areas.

Mr Stewart: That's right, but just have some flexibility in it, which we feel is in Bill 76.

Mr Struthers: I think the terms of reference could determine that, but I think the public should have an opportunity to provide input into the development of those terms of reference.

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Mr Stewart: I agree with you 100%, sir.

Mrs Munro: One more question: You mentioned the Munro Esker, and I just wondered whether or not in your studies you were able to find out the age of the water there.

Mr Struthers: Someone from the University of Waterloo has done that and he's to be in our area at the end of this month to make a presentation to a meeting of farmers, and we hope to find out at that time. But at this point I can't; I'd be guessing. I've heard figures, but I'd be guessing —

Mrs Munro: Okay, I just wondered.

Mr Struthers: Sorry.

Mr Gravelle: Good afternoon, Mr Struthers. Nice to see you again.

Mr Struthers: I was trying all day to remember where I'd seen you last. It was up in the northwest somewhere.

Mr Gravelle: That's right and I recognize you. It's great to see you and I'll look for a talk with you later. I hope we get a chance.

It's just been really interesting for my case for the last couple of days sitting on the committee too, because it comes down to the same sort of issues continually. Mr Stewart made reference to the amount of time it takes, you know, 13 years. And that's used in a manner that suggests that's just too long and I think one can understand why generally that seems like it's too long, except you balance the other side with the reality of what you're dealing with; you're dealing with something that's going to have an extraordinary impact on people's lives for an extraordinary amount of time.

Mr Struthers: We were told 1,000 years.

Mr Gravelle: That's right. So you've got to say, "Gee, is 13 years too long?" And we're being told it's costing too much to do this and everything else. But, again, I find myself trying to always be reasonable and recognize: "Okay, is there a balance? We can find it." It seems to me the one thing that's becoming absolutely clear, and you make very strong reference to it, is that in order for the process to be fair it's incredibly important that there be intervenor funding. What seems equally clear is if you don't have the option of intervenor funding, obviously it means that you are just by definition limiting the amount and the level of public participation in the process.

I don't want to just ramble on because I want to give you a chance, but it seems to me there's also been reference to the fact that, "Gee, that needs to be changed or there needs to be a different way of setting it up so it doesn't become just a process where consultants and everybody else get involved." We probably agree on that too, clearly the need for intervenor funding, that I would think the government would want as well and would recognize its value. It's been made very clear by a number of people, proponents as well, that the intervenor funding has brought out all kinds of information.

I'm obviously supporting that. Have you been operating without intervenor funding or did you have inter-

venor — that was what I thought; you'd been operating without it.

Mr Struthers: Yes, we went out, cap in hand, and got what we could.

Mr Gravelle: Right, and even the aspect of who qualifies — I mean, that's tricky; it has to be determined and who's involved in the process because one can argue that everybody's involved. Anyway, I want to give you a chance to emphasize the need for it and perhaps what a difference it would make if you had that option, being people who are obviously very directly affected by a major project.

Mr Struthers: I can see intervenor funding making any process much more credible, because if you have a balance of information coming from both sides that both sides are comfortable with, then the dispute is more or less gone from the whole process. If you can come up with professionals for proponents and for the, to use an old term, opponents — we don't like to say we're opponents to something, but if both sides have access to intervenor funding which will allow them to hire the necessary professionals to look at the information, to develop the information, to go out and look at the site and do the necessary work out there to ensure the information they're giving us is the most accurate information possible, then we've got to be comfortable with it.

Mr Gravelle: Yes, because the point has certainly been made, and it's true — it's as true for me as I think it is for the general public — about how complicated legislation is and how complicated the bills are. The environmental assessment area is further complicated, or more complicated perhaps. So I think it does seem only fair that for something as important as this, that has the kind of impact it has, there should be this kind of assistance. I think your point's been made very strongly.

The Chair: Thank you very much for your presentation, Mr Struthers.

RESPONSIBLE ENVIRONMENTAL AND ECONOMIC PROSPERITY ASSOCIATION

The Chair: We will now proceed with Martha McSherry. Ms McSherry, welcome this afternoon. We've distributed your document to all of the members.

Ms Martha McSherry: The Responsible Environmental and Economic Prosperity Association, the acronym being REEPA, is a citizens' coalition founded in 1990 for the purpose of advocating responsible and sustainable environmental development, along with responsible economic development in the district of Timiskaming. REEPA has been actively involved in the preconsultation phase of the environmental assessment process at the Adams mine site near Kirkland Lake. REEPA members presented to the standing committee on social development regarding the Waste Management Act, 1991, held in Kirkland Lake. REEPA continues to be active in public education and community organization.

REEPA supports the environmental assessment legislation as an essential process for ensuring environmental sustainability. The EA act is designed to anticipate and prevent environmental problems before they arise.

Currently, projects that are subject to the EA act are required to undergo a full, rigorous and public review of the biophysical, socioeconomic and cultural impacts of the proposed project, the alternatives to the proposed project and the alternative methods of carrying out the proposed project.

Throughout the EA process, proponents of a project are to ensure meaningful public involvement and rigorous agency review. The rigours of the full EA, especially the requirement to evaluate alternatives, helps proponents develop environmentally preferable solutions to problems or opportunities. As an example, the EA process in waste management has fostered greater attention to the 3Rs rather than merely encouraging better landfill design. The EA process has helped ensure positive steps towards sustainability, rather than simply justifying the worst environmental excesses of business as usual.

It is our understanding that over the 20 years since the Environmental Assessment Act was enacted by the Progressive Conservatives in 1975, a number of issues have arisen on a consistent basis. We are told that the primary problems with the current process, particularly as it applies to the individual EAs for projects like waste disposal sites, are that it can take too long, it can cost too much, and the results can be unpredictable. As a result, proposed reforms in Bill 76, such as the mediation, the review deadlines and the public consultation, are useful and long overdue.

REEPA felt it was important to present to the standing committee on social development regarding the Environmental Assessment and Consultation Improvement Act, 1996, or Bill 76, because we are very concerned that Bill 76 does not guarantee a full EA will be required for undertakings such as landfills, incinerators or any other environmentally significant undertaking. We have chosen to point out where we have difficulty with the amendments to the EA act. In addition, REEPA has provided recommendations on how we'd like to see Bill 76 improved.

Areas of Bill 76 that are of concern to REEPA and that we do not support, as drafted, are the following:

Clause 6(2)(c) and subsection 6.2(3), which permit the Minister of Environment and Energy to approve EA terms of reference which do not include or address essential EA requirements; for example, alternatives to and alternative methods that are currently mandatory under subsection 5(3) of the existing Environmental Assessment Act.

In the landfill context, this means that private waste management companies or municipalities could seek and receive EA approval without examining alternatives to landfilling; for example, the 3Rs, alternative methods; for example, different landfill designs or different sites that may be environmentally superior to the site preferred by the proponent, or the full range of biophysical, socioeconomic or cultural impacts caused directly or indirectly by landfills. In addition, Bill 76 gives the minister other broad powers to vary or dispense with requirements of the EA act and to grant wholesale exemptions from the act. See subsection 3.1(3) and section 3.2.

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A second area of concern to REEPA is that Bill 76 does not guarantee early or effective public participation

in the EA process. In an information flyer dated June 1996, published by the Ministry of Environment and Energy and titled "Amendments to Ontario's Environmental Assessment Act," it says that among the improvements, the amendments would guarantee public consultation from the earliest stage in the process, provide early and clear direction to the kind of information proponents must submit, and place tight time lines up front for all key steps in the decision-making process.

Despite those assurances, Bill 76 does not require upfront public consultation during the development of the critically important EA terms of reference; it does not define what constitutes consultation or define who is an interested person for the purposes of consultation; it does not expressly require upfront public consultation on proposed exemption declarations, harmonization orders or EA policy guidelines or regulations; and finally, it does not require proponents to provide participant funding or intervenor funding to facilitate public participation under the EA act.

A third area of concern is that Bill 76 does not reduce uncertainty or unpredictability within the EA process. Bill 76 will likely increase uncertainty and unpredictability by overpoliticizing the EA process through excessive ministerial and bureaucratic discretion. Bill 76 gives the minister and the director of the EA branch over 30 different discretionary powers, which are frequently unaccompanied by detailed criteria or public notice requirements, to help structure the exercise of such discretion. Bill 76 empowers the minister to deny reasonable EA hearing requests, to scope or narrow the matters to be considered in EA hearings, and to dictate the length of EA hearings. This bill also gives the minister broad powers to delegate his or her powers to various persons, including non-ministry personnel, and to refer EA matters to an entity for a decision.

Considering our above concerns, REEPA supports the following amendments to Bill 76 as it exists which relate to the exemption declarations, the terms of reference and the public consultation.

The exemption declarations: Bill 76, section 3.2, empowers the Minister of Environment to allow sweeping exemptions from the EA act to any proponent or undertaking without adequately detailed exemption criteria. The bill does not quickly impose public notice and comment requirements respecting proposed exemption declarations. The bill does not impose a duty on the minister to monitor and report upon compliance with terms and conditions attached to the exemption declarations. REEPA recommends the following:

— That section 3.2 of Bill 76 have amendments that outline specific statutory exemption criteria that are focused on environmental significance.

— That there be public consultation on proposed exemption requests through the Environmental Bill of Rights registry and other appropriate means.

— That a duty be directed on the minister to monitor and report upon compliance with terms and conditions attached to exemption orders.

— That the minister be empowered to issue enforceable compliance orders against proponents that contravene terms and conditions attached to exemption orders.

Terms of reference: Essential EA requirements that are currently mandatory under the existing EA act — “alternatives to” and “alternative methods” — are optional or negotiable rather than required in every case. Bill 76 does not require proponents to pay participant funding to eligible parties in order to facilitate public participation in the development of the terms of reference. In addition, Bill 76 does not ensure that there is meaningful, upfront public participation in the development of the terms of reference. That sounds like a repeat. REEPA recommends the following:

— That sections 6 and 6.1 and subsection 6.2(2) of Bill 76 be deleted and replaced with amendments that stipulate public consultation requirements during the establishment of the terms of reference before it is submitted to the minister.

— That the minister only approve terms of reference that will constitute a full EA; for example, the existing subsection 5(3) of the current Environmental Assessment Act.

— That participant funding be required to facilitate public review and comment on the proposed terms of reference.

Public consultation: The Bill 76 duty to consult occurs when the proponent is preparing the EA document, not at the terms of reference stage or post-EA submission stage. The bill does not define “consultation” or “interested person” for the purposes of consultation. In order to facilitate meaningful public participation in the EA process, Bill 76 does not require proponents to pay participant funding or intervenor funding to suitable parties.

REEPA recommends that the section 6.1 be deleted and replaced with these amendments: require and define meaningful public consultation from the earliest stages of the EA planning and throughout the entire EA process; that the public be notified throughout the process of significant time lines; and that mandatory participant funding and intervenor funding be required.

I just want to make a note about the intervenor funding. I submitted a letter to the Minister of Environment requesting that intervenor funding stay in place and I got a letter back from the MOEE suggesting that participant funding at a hearing before the EA board would be awarded at the end of a hearing. As a citizens’ group, where does our group get the money to participate in the process? We can’t. I don’t have that kind of funds. I’m just a run-of-the-mill mother and working in my community with a small family. Where do you get the money? So that’s really not going to work.

I thank you for the opportunity to present at this hearing and I trust that you will give REEPA’s recommendations full consideration. Our citizens’ coalition wants to work with the MOEE and the government to protect and conserve Ontario’s environment and ensure its wise management in the interest of the citizens of Ontario. We believe that meaningful public involvement throughout the EA process can foster businesses to be competitive and innovative, striving for alternatives that promote sustainable economic development.

The Chair: Mrs McSherry, thank you very much. I’m sure you’re better than a run-of-the-mill mother. We

begin with the government side. We have a little over five minutes per party.

Mr Stewart: Thank you for your presentation, Ms McSherry. Just a couple of small questions. One is the concern of interested people and eligible parties. How extensive do you think that should be?

Ms McSherry: That’s a very good question, because right now in our area during the pre-consultation phase of the environmental assessment process on the Adams mine site it was very broad. The Temiskaming Federation of Agriculture was involved. They had to work to get involved, but they got in. We were a coalition of concerned citizens. We had a fair seat and a number of other parties within the community or within the district had that chance and they had to submit letters to Metro to justify them having a seat.

I thought that the process was running quite fairly. Since Metro pulled out, we have a private situation now where Notre Development is taking on a preparation for an EA and they very selectively picked who they wanted to sit on their advisory committee. They’ve excluded us and we’ve been involved since 1990 in this project. I think we’re quite a legitimate group. We have always tried to be very reasonable in terms of presenting our facts and substantiating them so that we don’t get slapped with a lawsuit. I feel that when you talk about who are interested parties, that has to be clarified.

Mr Stewart: I think that’s one of the reasons that they put “interested” in so that there was good flexibility for it rather than just saying, “It’s got to be 10 miles or 10 kilometres or whatever around the site.”

Ms McSherry: I don’t think you can put the geographics on it.

Mr Stewart: Yes. I think that was the reason for the terminology they used.

The other one I wanted to ask, was that we’ve heard a fair bit today and have for the last week and a half about there being nothing in it regarding alternatives, that you have to look at all alternatives. Under the present legislation we were not allowed to look at incineration and various other forms, energy from waste, fuel additives etc. Do you really believe that the municipalities will ever stop looking at all these alternatives? They have to because of the cost factor. They cannot not do the 3Rs because of the amount of money they’ve invested in it over the years, the vehicles they have etc. So I think that responsible municipalities — and we seem these days not to give them very much credit — will look at those alternatives if they are to look at a true waste management program, because that’s what waste management means, when you have to look at all the aspects.

1610

Your thoughts: Do you really feel that they won’t, that all of a sudden a landfill will be open and everything’s going to go to landfill? I just don’t. I think public opinion will not allow it to happen.

Ms McSherry: I again reflect back to the situation I’m currently in. You’ve sat here and practically gone through a process that we’ve encountered in our area. You’re hearing all sides and they’ve all got very good points of view and they’re very strong and passionate about their points of view. For you to have to sit here and conclude

on that is very tough business. If you're living in an area like we are where economically we're suffering — that's very obvious; you've heard about that today — and someone comes in and offers us a very good package, as a municipal councillor I might put my blinders on and think that jobs are more important than maybe some of those environmental concerns that I know are important but, my goodness, jobs are important too. That's what it boils down to.

Looking at the alternatives gets real tricky, depending on the community that you're working in. Rural northern Ontario is I think very vulnerable to getting themselves into a situation where they would get bought off. It's just a feeling I have, a gut feeling.

Mr McGuinty: Thank you, Ms McSherry, for your presentation. In the case of your experience, how do you think people who might be interested in this particular proposal have been given notice?

Ms McSherry: Every medium means that you can think of — the paper. If you know there's a legitimate group in that community, you send them notice. Put it on the e-mail or the registry for those people who have that route. You put flyers out. You do the gamut. In small rural communities the local newspaper has a very high rate of readership.

Mr McGuinty: Clearly then the minister's proposal that she would require that terms of reference as proposed by the ministry officials be put on the Environmental Bill of Rights registry, that would hardly be sufficient or adequate.

Ms McSherry: No, on its own it certainly wouldn't be.

Mr McGuinty: One of the things that we haven't talked about much during the course of these hearings is this concept of the unwilling host, and much was made by the Premier when he was leader of the third party that he would never want to force a landfill site on an unwilling host community. When I first received my copy of Bill 76 I was looking to see if that kind of a provision was found within there, and it's not. If that's an amendment that we want to put forward, one of the things that we'd have to define is "unwilling host." How could we define that? What's the test?

Ms McSherry: Yes, what's the test? I'd go to the people; I really would. I'd have a referendum and all the interested parties would have to agree on the question, so there's not just a very selected question. You go to the people and you give a time period where the people can be informed. If they want to get access to information it's available, and that there be public presentations. There's a wisdom in the people. I think there is.

Mr McGuinty: Right. I'm going to push this a little bit further. I can tell you that if somebody proposed that they put a landfill site near my backyard, for instance, I've got my own personal interest — I have four children — and I wouldn't be inclined to have it there. I think I have a good inkling as to how I would vote in my referendum. It might be that every community in this province would decide it didn't want to assume responsibility for anybody's waste. What's your advice in that regard?

Ms McSherry: Then I say that we have to stop and look at the problems we're having with landfills. Why doesn't everybody in the province want them? Because they contaminate our groundwater, and once you do that, it's irreversible damage. So we've got to look at serious alternatives.

We've all talked about the three Rs. We could be much more vigorous. Metro Toronto has done an in-depth waste management study in association with the pre-consultation review. You could probably get 80% reduction of garbage in a place like Toronto. They've got studies. They've done it, spent a significant amount of money on it. Then we're talking about what you do with the residual. Talk to any hydro-geologist and they'll tell you the optimal site has 30 feet of clay and you want to rely on natural attenuation. You want to have a site where if it does leak, you're not going to have it getting into groundwater sources. So you look for those optimal sites.

It's a major area of concern. I've certainly given it a lot of thought. I think only if citizens stand up and speak up and say, "I don't want it in my backyard," are politicians going to hear that the current waste management practices are unacceptable.

Ms Churley: I just want to congratulate you and thank you for your submission. The same themes keep coming up over and over again, and I think we've all heard it loud and clear. I think that your answer to the last question was also a more detailed answer to Mr Stewart's question around alternatives and why it's so important that with the difficulty in siting incinerators and landfills over the years, citizens' groups from the ground up have forced municipalities and politicians to look at new and innovative ways of dealing with our garbage.

There's concern that if we don't keep looking at those, the out-of-sight, out-of-mind kind of mentality, particularly with the defunding that's going on by this government now in terms of the blue box and perhaps revoking the waste-in-packaging audit and work plan regulations and who knows, more to come; that if we don't keep vigilant and don't keep pressuring to be more and more innovative — I think your answer to that question was useful to all of us to understand why it's so important to keep that on the agenda.

I don't really have a question. I just think that you posed some really important questions for us to think about today as we make amendments to this legislation.

The Chair: Thank you very much, Ms McSherry, for coming here this afternoon to share your views. We appreciate it very much.

Committee, this was our last witness. Is there any other business?

Mr Gravelle: Very quickly, I appreciate that I received a response from Dr Galt related to my question, but particularly in light of what we further heard today, that another official of the ministry obviously made reference to the same expectation that MNR might be applying for an exemption, particularly once this bill goes through — and I must admit I tried to frame it that way yesterday — what I'm curious about is, if I may ask formally, if there has been any informal request as well. You very clearly say he has not received a formal request from the Ministry of Natural Resources. What I'm

interested in is, has there been any informal request or, even more specifically, any discussions between ministry officials as to the future plans of the Ministry of Natural Resources to seek such an exemption?

Mr Galt: I'm wondering, Mr Chair, if maybe the question shouldn't be addressed to the Minister of Natural Resources, since that's the ministry it originated from, and see if from the source there's a problem or something is happening rather than going through the committee to the Ministry of Environment and Energy. I strikes me that it's a natural resource issue that's being requested. I'm not so sure, asking about discussion, that we're really going to get to the heart of the matter that you're concerned about.

I'm not objecting to it. I don't mind doing that for you, but I don't know that it's going to get you the answer you're looking for. I think I'd go right to the origin of the concern, maybe to the deputy minister.

Mr Gravelle: I certainly fully intend to pursue it with the minister and minister's office, but if indeed you are able to find out for us whether or not there have been any informal discussions in relation to this issue, in that we've sort of started the process, I would certainly be grateful and I think the entire committee would be grateful, because as I say, we now have a second presenter telling us they spoke to a specific MNR official who discussed this issue. So this seems slightly — perhaps not surprising in terms of a formal request, but there has obviously been some discussion on this.

Mr Galt: So you'd like it run through the system again and ask to put an "in" in the front.

Mr Gravelle: If you could, I'd appreciate it.

Ms Churley: To add to that, I think some of these questions are fundamental for us to have answers to before we start attempting to make amendments, and perhaps the government would like to make amendments based on information we get around areas like that and the impact it might have with the changes to this particular bill.

Cuts in various waste programs: Are there any more coming? I will be submitting some questions about that, but I think we need to have more awareness. This came out of the blue. Some of us started hearing about it a little while ago. I think we need to look at the big picture before we finalize and recommend to the full Legislature the changes that are proposed here because these things do have an impact overall. I'd like you to work really hard to get that information because it is extremely relevant to this bill.

Mr Galt: You're referring to Mr Gravelle's request?

Ms Churley: Yes.

Mr Galt: We'll plug it back in and see what we can do for you.

Ms Churley: Thank you.

The Chair: We reconvene tomorrow, room 151 I believe it is, at 10 am. Thank you very much, ladies and gentlemen.

The committee adjourned at 1621.

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**In attendance / présents*

Substitutions present / Membres remplaçants présents:

- Mr Doug Galt (Northumberland PC) for Mrs Johns
- Mr Jim Brown (Scarborough West / -Ouest) for Mr Jordan
- Mr Dalton McGuinty (Ottawa South / -Sud L) for Mr Kennedy
- Mr R. Gary Stewart (Peterborough PC) for Mr Newman
- Mrs Lillian Ross (Hamilton West / -Ouest PC) for Mr Preston
- Mr Ed Doyle (Wentworth East / -Est) for Mr Smith
- Ms Marilyn Churley (Riverdale ND) for Mr Wildman

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Standing committee on social development

Comité permanent des affaires sociales

Environmental Assessment
and Consultation
Improvement Act, 1996

Loi de 1996 améliorant le processus
d'évaluation environnementale
et de consultation publique



Chair: Richard Patten
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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON
SOCIAL DEVELOPMENT

Wednesday 14 August 1996

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DES
AFFAIRES SOCIALES

Mercredi 14 août 1996

*The committee met at 1004 in room 151.*ENVIRONMENTAL ASSESSMENT
AND CONSULTATION
IMPROVEMENT ACT, 1996LOI DE 1996 AMÉLIORANT LE PROCESSUS
D'ÉVALUATION ENVIRONNEMENTALE
ET DE CONSULTATION PUBLIQUE

Consideration of Bill 76, An Act to improve environmental protection, increase accountability and enshrine public consultation in the Environmental Assessment Act / Projet de loi 76, Loi visant à améliorer la protection de l'environnement, à accroître l'obligation de rendre des comptes et à intégrer la consultation publique à la Loi sur les évaluations environnementales.

The Chair (Mr Richard Patten): Good morning. We expect a few members to be joining us presently in addition to the existing members. We begin our final day of hearings in Toronto on Bill 76. We have one more day in Thunder Bay tomorrow.

CANADIAN BAR ASSOCIATION-ONTARIO

The Chair: Our guests this morning are from the Canadian Bar Association, and we welcome you here, the Ontario environmental section in particular. You have 30 minutes to make your presentation. Any time that remains between your presentation and the 30 minutes is divided up equally between the three parties for questions.

Mr Len Griffiths: My name is Len Griffiths. I am the past chair of the environmental section of the Canadian Bar Association-Ontario and I'm a member of the legislative subcommittee.

Ms Cara Clairman: My name is Cara Clairman and I'm on the executive of the environmental section of the Canadian Bar Association.

Mr Griffiths: Thank you very much for allowing us an opportunity to make a presentation to you this morning. The environmental section of the Canadian Bar Association-Ontario is comprised of over 500 environmental practitioners in the province. As a result, it's often difficult for us to make these types of submissions with any form of consensus-building or unanimity, which is indeed impossible in some cases to achieve. We are here representing not only the section, but specifically we have 30 members on our executive and, further, 20 of those members are on a subcommittee that's known as our legislative subcommittee.

The legislative subcommittee has been involved in the development of the submission we're making this morning, but I should tell you, as is indicated in our written submission to date, that the final submission we have for

you this morning has not been circulated to every member of the legislative subcommittee, for lack of time.

What we intend to do is to circulate it to all of the members and subsequently obtain approval from our council of the Canadian Bar Association to make a final written submission to you, which we hope we'll be able to forward to you over the next few weeks. So what we have this morning is a compilation of comments that have come from members of the legislative subcommittee. Not all of the comments have been incorporated in the written submissions, but we hope to do that by the time we give you the final submission.

This morning we wanted to highlight four issues that were of importance and are of importance to our members. These are the issue of deadlines in the process, the terms of reference that are proposed in Bill 76, public consultation, and mediation. I will address the first issue. My colleague, Ms Clairman, will deal with terms of reference and public consultation. I will conclude with mediation. Then of course we'd be more than happy to take questions that you have. Indeed, we hope to make our presentation no more than 15 minutes so that we can take advantage of your questions.

First, I'd like to say that our section generally supports an initiative for change with respect to environmental process in Ontario. Of course it goes without saying that it has to be changed for the betterment of the environment and it can't be at the cost of the environment. We have a number of different interests that are represented on our own subcommittee, and we hope our final submission will provide you with various views on some of the proposed changes. There is, as I said before, not necessarily consensus, but we hope that if we can give you one, two or sometimes three different views, your committee will be able to take those into account in making your own conclusions.

We think it's a good opportunity, though, right now; there's good momentum that exists. We have had good and bad experiences with environmental assessments in Ontario. Most of our members have participated in the process. We also think there's a strong Environmental Assessment Board right now that's given good direction in recent years and recent months to participants. So we think it's an excellent opportunity for the government to look at changes and make changes that will better the process, which will in turn, in our view, better the environment in Ontario.

1010

Let me turn to the issue of deadlines. We only intend to hit the highlights of our submission, and you can either read the submission we've provided to you this morning or wait for the final submission that will be forthcoming.

We support the inclusion of deadlines in the process. We think it's one of the fundamental problems that have occurred in the past. It's a problem that has been remedied to some extent by the board with its rules, but we certainly support the inclusion of time lines or deadlines.

Currently, as the bill is drafted, there are certain time lines, deadlines, that are included specifically in the bill and there are others where it is indicated they will be prescribed by regulation. We would prefer that all deadlines be articulated in the statute rather than dividing them between statute and regulation. We think it's important for participants to be able to see what the deadlines are. It's obviously not possible for us to make comments on the reasonableness of the proposed deadlines that will be prescribed by regulation because we don't have a draft of the regulation today, but our members believe it's appropriate to have the deadlines set out in the statute.

Secondly, it also goes without saying that the deadlines have to be reasonable. As practitioners who will have to live with these deadlines, it's our view that in certain circumstances, as currently drafted, Bill 76 sets out unreasonable deadlines. For example, the deadline requiring a proponent to respond to deficiencies that may be articulated by the ministry within seven days, in our view, is insufficient.

Likewise, if the ministry has provided its list of deficiencies only 14 days before the end of the review process, which is required by the bill, and if the proponent is able to get a response back within seven days, the ministry would then be stuck with only seven days to consider the response to the deficiencies, which in our view is equally unfair to the ministry as it would be to a proponent. What we've suggested, for example, is increasing that time to 30 days, which in our view is more reasonable.

Finally on deadlines, it's our view that there have to be consequences for failing to meet deadlines: accountability. The board has included reference to this in its rules. In our view, without consequences that follow the failure to meet a deadline, indeed the deadlines will not likely be met and will not have any force to make the process more efficient.

The kinds of consequences that have been proposed by several of our members are consequences that are known in law and are used in various proceedings; for example, cost consequences, that if someone doesn't meet a deadline, there may be a cost consequence applied to them. They may have to pay costs that are incurred by the parties who have suffered prejudice as a result of the failure to meet the deadline.

Further, it may be that in certain circumstances, if the ministry is unable to provide a response, that silence may indicate that the ministry is content with what has been submitted and the process will move along. I can tell you there is not unanimity or consensus in our group on that.

We hopefully may even have more types of consequences available for you in our final submission. These are a few that we've had to date.

Ms Clairman: Now we'll move on to terms of reference. Again, we are in support of the requirement to submit proposed terms of reference early in the process.

We think this will make an effective replacement of the current statute, with its requirement to have the environmental assessment accepted prior to it being approved.

We're hopeful that these terms of reference are going to provide all the parties with a guide that's early enough in the process to guide the entire EA process. But because this can be so important, and it is going to come up front, we have a recommendation that the terms of reference be considered at all stages of the environmental assessment process, including the public consultation stages, very early.

We also think the government should consider adding a public consultation requirement to section 6 of the bill, the terms of reference section, and that public consultation could assist the minister in making her decision on the approval or rejection of the proposed terms of reference.

Finally, we also would recommend that the minister's approval or rejection of the proposed terms of reference be given with written reasons, provide all the parties with the explanation for why those terms of reference were accepted or rejected.

Further, we notice in the bill that the board and the minister, in their consideration of an application, are required to consider the terms of reference, but they're not bound by these terms of reference. There's a concern among our members that if the minister and the board, in making their decision, are not bound by the terms of reference, there could be a decision against a proponent, for example, because that proponent may have failed to consider an issue, even though that issue was not in the terms of reference.

In our view, the minister and the board should not simply be required to consider the terms of reference in making their decision, but should be bound by those terms of reference and of course there should be the flexibility to go back and make changes to the terms of reference in the event that new material information has come forward that require those terms of reference to be changed. Again, in the event that the terms of reference do need to be changed, public consultation should be part of the process to make those changes.

To sum up, we think that the board and the minister should be bound by the terms of reference.

One more point on the terms of reference: There is some confusion in the bill as to whether the terms of reference can be used to scope out what we currently know as the subsection 5(3) requirements, the substance of what's required in the environmental assessment, which is subsection 6.2(2) of the new bill. For example, is it possible to scope out alternatives to the undertaking, alternative methods from your environmental assessment using terms of reference?

This is something that's not clear from the bill and some of our members are concerned that the terms of reference may be used to avoid certain requirements under the current subsection 5(3). Some of our members would suggest that they would like to see the ability to scope out certain parts of subsection 5(3) in the event that there are circumstances which would indicate that those requirements need not be met. I'm not going to put forth a recommendation on this point as there is some disagree-

ment among our members. But this is a concern that really should be clarified in the bill.

I'd now like to move on to public consultation. We support the explicit inclusion of public consultation requirements in the bill. There are some improvements that we think, and our members have expressed their views, that these public consultation requirements should be clarified. For example, the definition of "persons as may be interested" — in other words, those persons who are to be consulted — there's uncertainty in the bill as to who should be consulted in the EA process. It's the view of our members that there needs to be some clarity, some definition on the interested persons.

Further, the issue of funding has not been addressed in the bill and with the Intervenor Funding Project Act expired, there is quite a bit of uncertainty as to how requests for funding are to be handled. Everyone, proponents, intervenors, they all need clarity on the issue of funding and there are concerns that if a proponent makes decisions on funding, whether those be to fund or not to fund, they may be criticized in the end of their process for perhaps failing to fully consult because they did not provide adequate funding. Even though there's no legislative requirement at this point to provide funding, we need clarity on whether it's the case that proponents should be funding participant funding early or intervenor funding.

We may have trouble achieving consensus on this point, but we do need clarity on the issue of funding. Some of our members have suggested including a funding requirement right in the bill; others have suggested perhaps a guideline on funding. In any event, one idea was that the government consider establishing a task force to address these important issues of interested persons and of funding that would take into account the views of all stakeholders.

1020

Mr Griffiths: If I can address the fourth issue, which involves mediation, we certainly support the concept of mediation. It's in keeping with the times. I think it's interesting to note that recently the rules of professional conduct for lawyers were amended to add the following clause: "The lawyer should consider the appropriateness of alternative dispute resolution to the resolution of issues in every case, and if appropriate, the lawyer should inform his or her client of ADR options, and if so instructed, take steps to pursue those options."

It seems to us that this is what is happening in the rest of the world, and in keeping with the times, it makes sense that there be some form of alternative dispute resolution mechanism, some mediation process, within the environmental process.

It has already existed to some extent. I participated in one hearing, for example, where we took a board member aside, and to his credit, he allowed himself to be used, if I can put it that way, as a mediator in a sense. It wasn't a formal process, but it was done in order to try to resolve some issues between the parties and try to get the parties to form some consensus on some of the concerns. Even though ultimately that wasn't successful, it was, in my view, a very good attempt by the board to offer an alternative to what can be quite adversarial procedures that go on in a hearing.

In our view, mediation can especially be helpful if there is a scoping of issues. The parties can get together and try, if they can, to identify the issues that must be resolved at a hearing, if indeed a hearing is required.

Some of our members — and we haven't heard from all of our members on this point — have suggested quite strongly in fact that the mediation process itself should be confidential. It is essential, in order for the parties to have meaningful discussions and to have full and frank discussions, that the content of what goes on in the mediation process be kept confidential and that there be consequences for anyone who discloses matters that are raised and discussed in the mediation process, consequences such as costs or even, members have suggested, contempt proceedings. It is very important that these matters be kept between the parties at the mediation stage. The public process would of course be all other processes involved under the act.

In summary, those are four of the important issues to our members that we have had discussion about, that we've received comments about. We will have further comments, I'm sure, in discussion that we will provide to you in the future when we have the final submission. We welcome questions on any of the points or anything else that you have.

The Chair: We begin the questioning with Mr Gravelle and we have four minutes per caucus.

Mr Michael Gravelle (Port Arthur): Thank you very much for your presentation. What I'd like to focus on, if I can, at the beginning — we haven't got a lot of time, obviously — you clearly make reference to the need for public consultation. You make reference specifically to the whole question of intervenor funding. If I may say so, without being the least bit rude, you seem to be hedging a tad in the sense that you're saying, "Gee, unless there is funding, it might be likely or possible that people won't have the ability to be part of the consultation process, which could lead to, literally, a decision not being fairly brought down, because people haven't been able to be fully consulted."

I guess I'd like to try to pin you down a bit more if I could. Are you saying that you feel intervenor funding should be provided to those who are interested? I know you tie it into the whole concept of the interested party, which is I think a good way of doing it. The fact is, we need to define the whole level of interest. Anyway, I think it's a really important point and I appreciate your bringing it up, but I did feel you were walking a bit of a tightrope there.

Mr Griffiths: Thank you for the question. This will be like pinning Jell-O to the wall. We have 20 members who probably have 21 different views on this issue. All I can say to you, to add hopefully some certainty or some clarification to what we're saying, is that it appears the two or three main views are that, on the one hand, there should not be intervenor funding, that parties should come forward if they have concerns and intervene and accept the normal cost consequences, the cost rules that are available in other proceedings in Ontario. That is one view.

I would suggest the other view is that we have to have intervenor funding and it has to be in the act in order to

ensure that interested persons can participate fully. Otherwise you cannot have an effective public process without providing a certain amount of funds.

I would also suggest that another view, which may come from a proponent's side, if I can call it that, is that there has to be some clarification. It's not good enough just to say there'll be no funding but then find out later that the board actually takes that into account when a decision is made.

I think what we're looking for is that we're going to try to put forward three, maybe four fundamental views to you and hopefully the politicians will do what politicians do best, and that is make decisions and take either one of those views or something in between. But I think the one thing we all agree on is that there has to be some clarification and some certainty from among the different views.

Mr Gravelle: You make a really interesting point — certainly in my time on the committee, it hasn't quite come up in that way — which is that unless you do allow the opportunity for real, full public consultation, you run the risk of that process not being fairly done. Therefore you can't make the case that a full public consultation has taken place, which does speak to the fact that intervenor funding may be needed. Obviously there are various groups who are going to be affected by the bill who just may not have the funds, and one can't be critical of them for not having the funds. This is an issue that comes up, obviously, regularly. I've maintained that in order to have that full fairness, you need the funding, and I appreciate your being careful on the issue.

The question of deadlines: I think you make quite specific reference to how you would change the deadlines. There's a sense of agreement with the process being speeded up, I guess is what you're saying. On the other hand, you think the way it's in the bill right now is too speeded up. Is that a fair way of putting it in terms of the time required? What are your thoughts? Is this a bill where they're trying very hard just to make things happen more quickly, which puts at risk the whole process itself?

Mr Griffiths: There's a perception, we believe, and I think it's a reality in many cases, that these cases just take too long. In a *Star* or *Globe* editorial yesterday, they talked about Metro's potential 10-year process to find waste management decisions, and that is out there. There are cases that have just gone on too long.

Our view is that you don't take a potential 10-year process, have concerns about that and turn it into a seven-day process. What we expect is that if we have reasonable deadlines that can be met, that can be relied on and that people, if they don't meet them, can fairly be criticized for not meeting those deadlines, those are the deadlines. Seven days versus 30 days isn't going to cause a lot of flak for any side, I would suggest. But if you get it down too tight, you're going to get people either putting in submissions or recommendations that aren't well-thought-out or they'll come and say, "I only had seven days; I need another two weeks," and then two weeks becomes a month.

Ms Marilyn Churley (Riverdale): I'm going to try to squeeze two questions into this. One is, I suppose, a bit technical. I'm not surprised that you've been having

trouble reaching a consensus on this issue. For some lawyers, it may depend on which side they've had the most experience in fighting.

On page 5, you talked about the fact that you're not clear on subsection 6.2(2), and I'm not sure why. I'm not a lawyer, but reading it, it's very clear to me that subsection 6.2(2) reads, "Subject to subsection (3), the environmental assessment must consist of," and then describes what I view as the heart of the EA, and that is alternatives to the undertaking and the site and all of that. But then in subsection 6.2(3) it says very clearly, "The approved terms of reference may provide that the environmental assessment consist of information other than that required by subsection (2)." I can't understand what the confusion is about. It's very clear: Reach the terms of reference and then some of this stuff can be negotiated off the table because this section says it doesn't have to include all that. I wonder where the confusion comes from.

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Ms Clairman: I think the confusion would come from "other than." This is the heart of environmental assessment. The things in section 6.2 that were in subsection 5(3) of the current act are not negotiable. "Other than" means additional things can be considered, but it's not clear whether the things that are in 5(3), or 6.2 now, can be taken off the table, because it says an environmental assessment shall have all those things. That's where the confusion is coming from. If it's additional things, that's what it should say, and if some of those things can be taken off the table than that's what it should say.

Ms Churley: I see. It's interesting that you can read it either way. You're the first ones to suggest it could go that other way. There's real concern from people who want the alternatives included, that this means that. In my view that's what it means and I think in the government's view, that these things can be taken off the table.

My second question is, and you didn't really get into it, about the discretionary powers to the minister, of which there are over 30. There are some now within the existing act, of course, but this really opens up the door for considerably more discretionary powers for the MOEE itself. Do you have any views on that in terms of certainty, clarity, when so much of course could be in each different EA, so much is discretionary?

Mr Griffiths: My colleague may decide to tackle that question but I suggest, unfortunately, in response to your question, that we have not had the opportunity to have sufficient comments from our members to make comment to you on that today. It is an issue we can raise with our members and hopefully give you our comments back in our final submission. But to suggest I could speak for our members today would not be appropriate.

Ms Churley: And you probably have different viewpoints on it anyway.

Mr Griffiths: That's true. Hopefully we can give you one or two viewpoints on it in our final submission, but to even suggest one today I think would be inappropriate for me.

Mr Trevor Pettit (Hamilton Mountain): Thank you for your presentation. I'd like to carry on a little bit relative to the intervenor funding. You indicate on page

5 of your presentation that you support mandatory public consultation. It seems to me that the current IFPA encouraged participation at the tail end only, and over the last couple of weeks we've heard from other deputants that they felt early consultation might have avoided what you may term as late-in-the-process participation and hence additional costs.

My question to you is, with introduction of the early mandatory public consultation along with the terms of reference, do you see these amendments reducing possibly not only the costs of intervenor funding but also the delays that are somewhat caused by, I guess we could call them 11th-hour or late-entry opponents?

Ms Clairman: I'll try that one. I think there'll be improvement with early public consultation and perhaps costs will be reduced, but that doesn't really address the problem of whether parties at that early stage should also receive funding to assist them in their review or their participation in the process. For example, we are aware of processes going on right now where intervenors are coming forward and asking for funding and proponents aren't sure what to do about that. They think, "Perhaps we should provide it because we're not sure whether at the end we'll be told, 'Oh, you didn't consult, because you didn't provide it.'" As my colleague said earlier, it's not so much an issue of whether there's funding or whether there isn't funding, because there's quite a bit of disagreement on that point among our members; what everyone agrees on is that all parties want to know whether they're going to get funding and when they're going to get it, and that will just make it easier for everyone.

Mr Pettit: But you do see the early mandatory public involvement as a vehicle to reduce possible intervenor costs.

Ms Clairman: I would think so, but again I'm not speaking for all the members when I say that.

Mr Griffiths: If I could add to that, I think there's likely strong support for that proposition. People have realized over the years, whether it was formal or informal, that the earlier you were able to get involved in the process, the better you were able to find out what their concerns were, deal with them and then move on to the contentious issues. The answer to your question is yes and yes.

Mr Pettit: You see this as a positive improvement to the EA act.

Mr Griffiths: Most of our members agreed with that, and it may be that we can get consensus on that.

Mrs Janet Ecker (Durham West): The confidentiality concern that you flagged around mediation: Where do we draw the line between the need for confidentiality if mediation is to work and having to report on the results of that in a public forum? How do we bridge that gap, because there are two things that need to be answered here: the public reporting process and the need for confidentiality during mediation.

Mr Griffiths: The recommendation we have in our submission today says that the line is clearly drawn, that nothing in the mediation shall be reported publicly without the consent of the parties — that's to the minister, to the board or any other way publicly, so it's with

consent. That has not been completely assessed by all our members, but we may get consensus on this issue. The line is, if there's mediation it must stay within the participants unless all participants agree to have it released.

Mrs Ecker: How does the ministry make the decision? We don't have to announce what the results of the mediation are, right?

Mr Griffiths: No.

Mrs Ecker: Under the process you have to say what the conclusion is in order to move forward with the process, so that means you have to say something about the mediation process, "We've done it and we've concluded," or "The result is," or the announcement coming out of that impacts on the process, does it not?

Mr Griffiths: Yes indeed, but the conclusion would be, "The result of the mediation is that there was no agreement made by the parties and the process will continue," but without revealing any of the actual discussions or disagreements that were made between the parties.

Mrs Ecker: If you've got further comments on that from your members I would be interested in seeing them.

The Chair: Our time has gone by quickly. Thank you very much for coming this morning, Mr Griffiths and Ms Clairman. We appreciate your taking the time, and we look forward to receiving your documents when they're ready.

PHILIP BYER

The Chair: We now call forward Mr Byer from the University of Toronto. Mr Byer, each member has a copy of your document.

Mr Philip Byer: I appreciate this opportunity to speak to you today about the proposed amendments to the Environmental Assessment Act, which is one of Ontario's most important pieces of environmental legislation. I plan to speak for about half my allocated time and leave, I hope, sufficient time for questions that you may have.

By way of background, I was chair of the Environmental Assessment Advisory Committee from 1986 until the committee was terminated last fall. As you may know, this three-person committee was established by the government in 1983 to provide increased public input and independent advice to the Minister of the Environment on matters relating to the Environmental Assessment Act.

During my nine years as chair the committee advised the minister on numerous matters, including whether projects should be subject to the act, policies and guidelines under the EA program, overlaps with other legislation, revisions to class EA and, most importantly, for the purposes here, legislative and administrative reforms to the EA program. Before I continue, I'd like to make clear that I'm speaking only on my own behalf today and not for others who are members of the committee.

In 1991 the committee carried out extensive, province-wide consultations with the public, proponents and government agencies about the entire EA program. We heard a number of significant, legitimate concerns about the lack of government commitment to effective and efficient implementation of the EA act, the length and

cost of the EA process, the need for greater direction and certainty, the emphasis on process rather than results, the need for early and effective public involvement and the limited and inconsistent application of the act.

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We also found broad support for the sound principles underlying the EA act: the evaluation of potential environmental effects, consideration of alternatives, the broad definition of the environment, documentation of the assessment, public and government consultation and review, and decision-making by an independent tribunal where warranted.

Our report to the minister, *Reforms to the Environmental Assessment Program*, contained 96 detailed recommendations for both administrative and legislative changes to address the concerns while maintaining the principles underlying the act. We believe that these recommendations would, as a package, significantly improve environmental assessment in Ontario, both for proponents and the public, by making it more efficient, effective and fair. I have three copies of our report that I would be pleased to leave with you.

As you know, the previous government chose not to amend the act but rather focused on making certain administrative changes. However, administrative changes are not nearly enough to address current weaknesses of the EA process and its implementation. I therefore commend the current government for trying to tackle at least some of the problems through legislative changes and am pleased to see a number of improvements, including some recommended by my committee, EAAC, included in Bill 76, such as the requirement for public consultation, concurrent public and government review of the submitted EA, combining the acceptance and approval decisions, the use of mediation and the establishment of deadlines.

It is regrettable, however, that the government has not used this opportunity to make other changes recommended by the committee that would go a long way towards making the process fairer and more effective; for example, establishing clear legislated criteria, procedures and consultation requirements for decisions such as exemptions and designations, and providing for an assessment of cumulative effects of sets of undertakings rather than the current focus on individual projects.

I would now like to speak directly to what is included in Bill 76. As I mentioned above, the bill includes many important changes. However, details in the bill run counter to the spirit of the government's statement that the revised act will maintain the key elements of EA and that it will result in increased public involvement from the earliest stages. Unless appropriate changes are made, the bill will undermine the effectiveness, fairness and integrity of the EA act. This is made even worse by the lack of funding to assist the public.

I will focus on only four crucial areas: terms of reference, class EAs, powers to refer decisions to bodies other than the EA board, and the delegation of decision-making powers. In addition to these, which I discuss below, I'm attaching a list of other specific changes that should be made. I also hope you will give serious consideration to other submissions that suggest amend-

ments in line with EAAC's recommendations in other areas.

Terms of reference: I fully support the concept of terms of reference that will help focus and direct the attention of the proponent and the public. However, there are fundamental problems with the way the current bill establishes the terms of reference. These are critical, since the terms of reference are the most important part of the revised EA process. They set the scope of all that follows.

Under clauses 6(2)(b) and (c) and subsection 6.2(3), the government or the proponent can develop binding terms of reference that ignore necessary elements of an environmental assessment which are set out in subsection 6.2(2), including alternatives and the key elements of the environment set out in the definition in section 1. An example of such scoping was in the previous government's Bill 143, which eliminated consideration of incineration and the export of waste in the EAs for waste disposal in the GTA. You can be assured that most proponents will try to use this section of the act to scope out as much as possible from consideration. Negotiations between the proponent and ministry on these critical scoping issues will be out of sight of the public and will likely cause unanticipated delays in the process.

The bill needs to be amended to ensure that any approved terms of reference are consistent with the intent of subsection 6.2(2) and the full definition of the environment.

The second major problem concerning the terms of reference is that there is no legislated requirement for public consultation during their development, yet the minister's description of Bill 76 states, "Right from the earliest stages of the process, there will be a guarantee of public consultation for all affected parties." I assume the minister is referring to her proposal elsewhere that there would be a brief public review period, perhaps only 14 days, under the Environmental Bill of Rights.

Believing this would be at all meaningful is frankly both naïve and deceptive. It would require your constituents to have access to the computerized EBR registry and to check it almost daily for terms of reference that might affect them. Can you imagine their reaction to being told later in the EA process that important issues are not being considered, they're off the table, because they missed their opportunity to comment on the terms of reference by not checking the registry on a library computer during a brief comment period, which might even be while they are on vacation during the summer? At least the scoping of the GTA landfill EAs under Bill 143 was developed through the open legislative process.

The bill needs to be amended to require meaningful consultation with the potentially interested and affected public during the development of terms of reference under clauses 6(2)(b) and (c). This should include prescribed minimum requirements concerning public notice, a meaningful public review period and reporting to the minister on the matters raised and how they have been addressed.

With respect to class EAs, class EAs have been a very useful and important feature of the EA program to allow for streamlined approvals of numerous and relatively

insignificant undertakings. Legislating the use of class EAs helps to clarify their legal basis and subsection 14(2) establishes important contents for class EAs. However, the definition of "class" in section 1 would allow for any undertakings, including landfills, no matter how environmentally significant, to be included under a class EA, and sections 13 and 14 would allow the planning for these undertakings to exclude essential elements of environmental assessment such as the consideration of alternatives.

Subsection 14(2) should be amended to ensure that at the project level the process for choosing the proposed undertaking includes the essential elements of an EA set out in subsection 6.2(2) for individual EAs; in other words, it contains the same essential elements, such as consideration of alternatives. In my view, if this is ensured and there is meaningful public process for bumping up undertakings from the class to an individual EA, then it is less important to restrict what types of undertakings can be covered under a class EA. What is lacking from Bill 76 are assurances that these requirements are in place.

In addition, the issues I raised above about the terms of reference for individual EAs also apply to the terms of reference for class EAs. Therefore, sections 13 and 14 should be amended similarly to the changes recommended for sections 6 and 6.2.

With respect to powers to refer decisions, section 11.2 allows for a referral of a matter to "another entity," and then later on in that section, it states "that is authorized under another act to decide such matters." While the act should allow for some flexibility in how decisions are made concerning technical details, this provision is much too open-ended with respect to what or who the entities might be and what matters might be referred. The referral could be to someone in the ministry or to a municipality for essentially all decisions of an EA application. In addition, this could result in a piecemealing of the decisions, where no one body has an overview of the entire application. Furthermore, subsection 11.2(2) allows for the matter to be decided without a hearing even if a hearing would otherwise be required. Together, these changes are not consistent with the minister's important claim that the role of the EA board is being maintained.

Section 11.2 needs to be amended to restrict referrals of only technical details that are a relatively small part of an environmental assessment application and restrict entities, for example, to agencies, boards and commissions of the province that are authorized under other legislation to decide the matters.

Finally, with respect to delegation of powers, one of the most important aspects of the current act is the political accountability for decisions. However, Bill 76 provides the minister with the power to delegate all but the final approval decision to others in the ministry. I fully support the notion that routine decisions that help streamline the process should be made by public servants, but Bill 76 allows for a number of very significant and potentially controversial decisions to be delegated. For example, as written, the bill would allow staff in the ministry to approve terms of reference that scope out important EA elements, to decide whether an application

should be sent to the EA board or some other tribunal or entity, to scope these referrals and to set the deadlines for the board. This is way too much power to place in their hands.

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The bill should be amended so that the decision to approve the terms of reference cannot be delegated. However, this change would not be so important if the recommendations above concerning the terms of reference are adopted. Similarly, the power to refer part of a decision to other tribunals or entities should not be delegated without significant restrictions on such referrals as recommended above. Finally, the decision to refer an application to the EA board, scope such referrals and establish board deadlines should only be made by the minister.

All of these problems can be easily addressed through amendments to the bill. I urge you to make them; otherwise, I know that in short order you and your constituents will see that the integrity of the EA act has been undermined.

Thank you again for this opportunity to speak to you today and I'd be pleased to assist in any way to further improve the EA act.

Ms Churley: Thank you, Mr Byer. I know you've had very many years involved in this process and know it inside out, the good, the bad and the ugly; I know there's been some of all. This is a very good presentation and in fact picks up on themes that many community groups and environmental groups and even some proponents, in some cases, of landfills have picked out.

Most people agree the process was too long and cumbersome in places and it's my understanding that a lot of the delays took place at the government review period and that there's now going to be time frames on that. I wanted to ask you, in your view, given the complexities and differences in the kinds of cases that go before a board, is it reasonable to prescribe time frames in regulations that apply to everything in order to get it done on time? I personally support some kind of time frames, but I'm not quite sure of the best way to go about it so that you have the best environmental decisions made, especially with the cutbacks now to the ministry, and the cutting of committees like yours as well, which offered really valuable advice. That's a big concern of mine.

Mr Byer: Thank you for the question. I didn't address that question of deadlines here, but I think it is an important one. Part of the reason I didn't address it is because it will come up through regulations, at least the way the bill is written. Let me address it in two ways, or about two issues here.

First of all, should they be specified in the bill or in regulation? When it comes down to it, I prefer through regulation and the reason for that is to allow for experience to direct us, and regulations are easier to change than legislation. I like deadlines and I think they should be set out in regulation and I think there needs to be significant thought given to what those deadlines are.

With that said, I don't know if we want to deal with what the deadlines should be, but I'm very concerned with the deadlines the minister has indicated in her

proposed time lines. I know it says proposed EA approval time lines. I think some of them are way too short for them to be meaningful. I thought the comment by the previous speaker about — you need to have reasonable deadlines such that people can't come back and say, "Look, there was no point in it," or, "We need an extension." Have something that's reasonable that people can work under. That needs to be looked at in the context that there is no time line for how long the proponent takes. When the committee was dealing with issues, we could see many examples where proponents were taking months and months to deal with things, and then when it gets to the government it's, "Hurry up, hurry up."

I do say that I think there's fault on every side with respect to deadlines. There need to be deadlines, there needs to be clarity about what happens if they're not met, but they need to be reasonable. I'll be here or somewhere when the regulations come before us.

Ms Churley: Great, okay. Coming back to something you did talk about in your document, the process at the beginning, I think by now almost everybody without exception agrees that the public should be included in the setting of the terms of reference.

Mr Byer: I hope so.

Ms Churley: I hope that the government — I think in my memory only one delegation objected to that. All sides seem to think that makes sense.

What I describe as the heart of the EA, and many others, looking at alternatives, alternatives to the undertaking of the site etc, it's most people's understanding that can be negotiated off the table during the setting of the terms of reference. Can you explain to us briefly why it's important that those elements of EA be kept within the process, that they can't be just easily negotiated off the table?

Mr Byer: There are two aspects here. The heart of EA is the old section 5(3) and new subsection 6.2(2). These are important. Let me give you an example with a landfill. If someone comes forward to you with, and I'll use the example — there are two key elements there: alternatives and definition of the environment, although the broad definition is in section 1.

Let's take alternatives. If you come before me and say, "You can have this alternative and this one; these are the only two we're looking at," and there are a bunch of others that are reasonable out there but they're not being looked at, they've been scoped off the table for some reason, and you have these alternatives and this one is not good but this one is worse, what you only end up with is this not good one, unless — one thing we need to be clear on is there's also the other alternative, the third one, which is don't approve it at all, which is the do nothing alternative. It's really going to be hard here to decide between, "Well, it's not great but it's the best we've got versus do nothing."

I just think that we're much better off if we leave on the table — we need to be reasonable about this — the reasonable set of alternatives, but they can be scoped. The first issue is allowing them to take off, and the key thing that's maybe lost is the negotiation could be death of this. The government wants to speed up the process, but if you allow negotiation on the scoping up front,

particularly out of sight of the public, you've lost this streamlining issue.

Mr R. Gary Stewart (Peterborough): Thank you, sir, for your presentation. I want to go back to the terms of reference. Certainly, the indication in your report is that you want the public to be involved right from the start, and I can certainly appreciate that. But if they are involved right from the start and if the terms of reference are established — we heard the previous speaker saying the terms of reference should be flexible and should be possibly revisited as you go through the process. In my mind that was one of the reasons the process didn't work under the previous legislation. Do you feel that if the public is involved early or at the start and is involved with the terms of reference from the beginning, those terms of reference should be consistent all the way through the process?

Mr Byer: Do you mean binding on everyone?

Mr Stewart: Yes.

Mr Byer: Yes, but —

Mr Stewart: Do you want to stop there?

Mr Byer: Let me tell you what the problem is. First of all, it needs to be meaningful public consultation, not something on the environmental registry for 14 days or 28 days.

Mr Stewart: No, I'm not talking about that. I'm talking about —

Mr Byer: Talking about meaningful consultation, if there's meaningful consultation they need to be binding, and part of the reason is you need to bind the public in addition to the proponent. We've seen many cases where the public can say, "Well, I don't need to go to this meeting or deal with it because we know we can get a kick at it later on." There needs to be buy-in to these terms early on.

The "but" is if you look on page 7 — I didn't talk about these; these are proposed other recommendations — the first one there does say that there will be cases where new information, significant information comes up later on. There needs to be some legislative authority for the minister to amend the terms of reference later on where it's recognized that these are significant.

What I've recommended on my attachment is that section 6 should allow the minister to amend approved terms of reference during the EA process in exceptional or unusual situations where important new information comes forward that would affect the validity of the approved terms of reference. It has to be significant. From a legislative point of view there needs to be an out for the minister, but it's got to be used carefully.

Mr Stewart: Should the public also then be involved with the new information and the possible changes then to it?

Mr Byer: I guess the public could always write to the minister saying: "Listen, we've been part of this process and we think the terms of reference are fundamentally flawed now that we've been part of it. We've participated and now new information has come forward." The terms of reference are set before any environmental studies are done and there's a real problem there.

There is an opportunity under the act — it doesn't say it explicitly — for the proponent to come back with new

terms of reference. That's a little unclear here, but there is that possibility, that they start again. I think you should look at this question of what happens during the process, once people finally look at the environmental significance and start the EA process, if new information comes up that makes those old original terms of reference really inappropriate. I'd say it's a key area to look at: What can the proponent do, what can the public do, and what can the minister do?

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Mr Doug Galt (Northumberland): Thank you for your presentation. I'd just like to refer to the section you have under delegation of powers, and we've been hearing a few comments about concern of too much political power in this decision-making process. That's been expressed on a few occasions. I guess I'm coming around to the question of you're looking for clarity; that's how I summed up what you were saying. Should that clarity be, in your opinion, developed more in this bill or should it be more in regulations that would be connected to the bill?

Mr Byer: Clarity on the delegation of powers?

Mr Galt: Delegation and how that process would occur with the different —

Mr Byer: I think the bill is fairly clear on what the minister can do and that the delegation can be limited delegation and that it needs to be in writing. My concern is what can be delegated. I don't think the approval of the terms of reference should be delegated, I don't believe the referrals to the EA board should be delegated, and the referrals to tribunals or other entities should not be delegated.

I do say though that if the terms of reference are clarified, if there's public consultation on the terms of reference and if that section 6 makes the terms of reference consistent — it must be consistent with 6.2(2); in other words, the guts of EA — then I would leave it with the director and the ministry. Quite frankly, I would be happy with that, but only if those other two changes with respect to terms of reference are made.

Mr Gravelle: Good morning, Mr Byer. I think actually the delegation of powers and the whole question of consultation are both areas I want to get into, but I probably won't have time.

In terms of the public consultation, I think it's interesting what we're hearing, which is that clearly there is an attempt by the government to make the process move more quickly forward for a variety of reasons. There's also an attempt to at least tell the public that they want to have the public involvement process, which is reflected in the title of the bill. But it's almost like they really do want to have it both ways, which is they want public consultation but not too much public consultation because one gets the impression there is a feeling that's what slows it down.

But would you not agree that unless the public consultation aspect is genuine — and I think many of your amendments speak to that very clearly — it basically affects the integrity of the whole process, that unless you have the public truly consulted, the process itself is not going to be a process that can be legitimately described as fair?

Mr Byer: I can give you a very clear yes. It affects the integrity of the entire process.

Mr Gravelle: I think that's an important, clear, simple point.

On the delegation of powers, and certainly I know you were not being the least bit critical of those public servants and civil servants who were involved in the process in terms of what they want to do, but if you can just quickly for us once again explain why you think that political accountability is crucial. We're dealing with the issues and projects. Obviously, as you say, there are some matters that do not have political significance but if they're made by a public servant or a civil servant, this could affect the integrity of the process if the minister is not accepting the responsibility for the decision. Do you agree with that as well?

Mr Byer: Absolutely.

The Chair: Mr Byer, thank you kindly for joining us and sharing your views with us. We appreciate that.

PAM WHEATON

The Chair: Our next witness is Pamela Wheaton, the past senior researcher and coordinator of the Environmental Assessment Advisory Committee. Ms Wheaton, that's the Environmental Assessment Advisory Committee of what, of the ministry?

Ms Pam Wheaton: It was an advisory committee of the minister. It's the same one that Dr Byer was chair of.

The Chair: I see, okay.

Ms Wheaton: Good morning, and thank you for the opportunity to speak to you today about this important legislation. My name is Pam Wheaton. I was the senior researcher and coordinator for the Environmental Assessment Advisory Committee for eight years before the committee was disbanded last October.

I'm making this presentation today on behalf of Dr Robert Gibson, who is a professor in the department of environment and resource studies at the University of Waterloo. Dr Gibson has worked in environmental assessment and taught EA-related courses for well over 10 years. He has not only been active in Ontario's EA reform discussions but has also advised other governments on the development of environmental assessment legislation and policies, including those of the federal, Yukon and BC governments. Dr Gibson was a member of the Ontario Environmental Assessment Advisory Committee also, from 1985 to 1994. As he is unable to be here today, he asked me to make this presentation on his behalf on Bill 76, the Environmental Assessment and Consultation Improvement Act, 1996.

I'd like to begin with an overview. The explanatory materials accompanying the release of Bill 76 include three very welcome messages which are largely contradicted by the actual substance of the bill.

The first welcome assertion is the reaffirmation of a commitment to the core of the existing law. The minister said in her June 13 statement to the Legislature, "A full environmental assessment will still be required and the key elements of the environmental assessment are maintained, including the broad definition of the environment, the examination of alternatives, the role of the

Environmental Assessment Board as an independent decision-maker." These are indeed the key elements of effective EA, and the government is right to recognize and preserve them.

The second positive assertion is the expressed intention that the amendments should (1) guarantee early public consultation and issue identification and resolution in the process, (2) provide early and clear direction and improve timeliness, (3) reduce duplication, and more generally (4) strengthen environmental assessment. These are worthy objectives. While they do not exhaust the list of areas deserving attention in EA reform, they would be important components of a comprehensive reform package.

Finally, in the covering press release the minister is quoted asserting that the amendments would make changes that "have been recommended over the years to previous governments." The reference here is presumably to the reforms proposed by the Environmental Assessment Advisory Committee at the end of a lengthy public process initiated in large part by the Canadian Environmental Law Research Foundation's 1986 report on environmental assessment in Ontario and including the work of the government's EA program improvement project. As coauthor of both the CELRF and EAAC documents, Dr Gibson is pleased that the present minister wishes to move on these recommendations.

Unfortunately, the provisions set out in the text of the bill are sharply at odds with the explanatory materials on each of these three matters. The problem is explored in the specific comments below.

First, the terms of reference mechanism: The bill introduces a requirement that proponents prepare and obtain approval for terms of reference that are to govern the preparation of the EA for the undertaking. Such a mechanism could provide for early and open clarification of EA requirements, minimizing confusion and conflict and improving the efficiency and effectiveness of the process. However, the current provisions in Bill 76 undermine this potential by (1) encouraging avoidance of the key elements of EA, (2) introducing a wide-open and inevitably inefficient case-by-case negotiated process, and (3) failing to ensure effective involvement of those potentially affected and concerned.

Clause 6(2)(c), subsection 6.2(3), clause 13.1(2)(c) and subsection 14(3) invite proponents to propose terms of reference that do not satisfy the standard requirements of the act. With these provisions, the terms of reference become a mechanism for avoiding full assessment. Proponents may, for example, seek and receive approval for terms of reference that narrow the definition of "environment" and eliminate the examination of alternatives.

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The unrestricted opening for terms of reference of any kind will increase substantially the potential range of variation from common expectations in EA. Unavoidably, this will increase rather than minimize uncertainty in the EA process. Everything will be open to negotiation. Many terms of reference deliberations and decisions will be politically sensitive as well as administratively complex. In so far as important parties will not be at the table, politically astute decision-makers will have to take readings of possible reactions.

In so far as most proponents are in the public sector, internal differences of analyses and priorities will have to be resolved through interministerial and provincial-municipal discussion. Such deliberations in a case-by-case process will add greatly to the burdens of the EA branch and the minister's office. It is difficult to see how the effects will not undermine commitments to timely and yet competent decision-making.

Despite the claims in the explanatory materials, the current bill does not ensure effective early public consultation in the development of terms of reference proposals or even provide a legislated guarantee of early public notice of submitted terms of reference proposals, nor is there any specification of what must be done to satisfy the vague requirement to consult. Introducing a terms of reference process that invites avoidance of key elements of EA and failing to ensure effective early involvement by potentially concerned parties is a recipe for conflict and delay.

Recommendation: To provide for early and open clarification of requirements without sacrificing the key elements of EA, the terms of reference provisions would have to specify what must be included in terms of reference proposals under these subsections and make clear that the terms of reference are to clarify how, not whether, the key elements of EA are to be satisfied.

This could be accomplished by eliminating clause 6(2)(c) and the similar or associated provisions in subsection 6.2(3), clause 13.1(2)(c) and subsection 14(3) and amending clause 6(2)(a) to require that a proposed terms of reference "indicate how the environmental assessment will be prepared in accordance with requirements set out in section 6.1 and subsection 6.2(2)."

Second, public consultation: The bill's title suggests that improving public consultation is the central purpose of the new law. The covering documentation stresses, more specifically, that early public access "will be guaranteed to ensure proponents consult all affected parties from the earliest stages of the process." However, the bill's only significant new provision on public consultation is section 6.1, which says, "When preparing an environmental assessment, the proponent shall consult about the undertaking with such persons as may be interested."

This obligation, which appears to apply only after the terms of reference have been set, does not cover the earliest stages of the process. Because "consult" is not defined, there is no guarantee of a meaningful public role in assessment deliberations. The requirement to consult "about the undertaking" seems open to narrow interpretation that, for example, would not cover alternatives to the undertaking.

In addition, the current bill fails utterly to provide for early, or even late, public consultation on other important EA process decision matters. These include decisions on exemptions, section 3.2; bump-ups, section 16; designation requests; and on the development of new regulations and policy guidelines, section 27.1, under the act.

Recommendation: Add provisions ensuring timely public notice of and opportunity for comment in deliberations on terms of reference proposals, on exemption, bump-up and designation requests, and on the develop-

ment of new regulations and policy guidelines under the act.

Third, harmonization: The bill provides in section 3.1 for harmonization with requirements of other jurisdictions, presumably to avoid unnecessary duplication. However, unless there is a clear requirement to ensure that the harmonized process requirements are at least equivalent to those of Ontario, the result will be a weakening of the EA process that is contrary to the government's stated intention. Providing unguided ministerial discretion in considering equivalency, clause 3.1(1)(b), and combining this with an unrestricted authority to waive requirements of the Ontario act, subsections 3.1(2) and (3), is an invitation to harmonization towards the minimum.

Moreover, complaints in Ontario have more often centred on duplication and overlap with other Ontario legislation, such as the Planning Act, than with the EA laws of other jurisdictions. This appears to be addressed in the bill only in a new discretionary ministerial power to refer any decision or part of a decision to another tribunal or another entity that is "authorized under another act to decide such matters," section 11.2. For these cases, no criteria are specified. Equivalency is not mentioned.

Recommendation: Sections 3.1 and 11.2 should be rewritten to specify that adjustments to permit harmonization or referral are to be permitted only where the harmonized or substituted process is at least equivalent to the Ontario EA process and where the key elements of the Ontario EA process are maintained. The specified elements must include the broad definition of the environment; the requirements to address purpose, alternatives to, and alternative methods; the provisions for public involvement and for rigorous public hearings before an independent panel; and the ability to impose binding terms and conditions.

Concerning referrals of parts of decisions, section 11.2 should be amended to specify that partial referrals may be permitted only where the referral of this part of the decision does not conflict with the maintenance of key elements of the Ontario EA process, including those listed above for the case in question.

Fourth, class assessments and sectoral guidance: Class assessments have provided a useful means of ensuring more open and environmentally enlightened planning of undertakings that do not need the full review and hearing process but are too significant to be exempted from EA requirements. The bill provides a firmer legislative base for the class assessment version of the process. However, it does so in a way that would undermine the value of class assessments and allow them to be used in inappropriate circumstances.

Contrary to the government's expressed commitment to retaining the key elements of EA, the bill's list of required contents of a class environmental assessment, subsection 14(2), does not appear to require identification and consideration of alternatives. Moreover, the bill fails to specify any essential requirements of the planning and approval processes established under class assessments, such as how purposes and alternatives are to be addressed, what documentation is to be provided, what

public comment and other consultation openings must be provided. Since the vast majority of EA work in Ontario is done under class assessments, this is an opening for a major gutting of key provisions.

The current bill also puts no limit on what may be considered a class for the purposes of using the class assessment option, subsection 1(2). EAAC, recognizing the lessons of experience in, for example, the interminable process of trying to apply the class EA process to forest management policy and planning, which involved over a decade before an EA was submitted, recommended strongly against the approach taken in the bill.

Various commentators, including EAAC, have argued for class and sectoral clarification of EA obligations. In response, the current bill includes a mechanism for prescribing terms of reference for certain types of undertakings, clause 6(2)(b). Here again, however, the idea is undermined by the failure to specify how these terms of reference are to be developed or to ensure effective public consultation.

EAAC saw broader clarification documents for sectors or other types of undertakings as equivalent in importance to class assessments. Indeed, EAAC proposed use of combined sectoral and class assessments to provide for both overall, generic evaluation — of alternatives and impact concerns — for specified types of undertakings and specification of streamlined planning and approval processes for undertakings of the types covered here. The intended result would be more effective concentration of EA attention on larger issues, as well as clarification and simplification of requirements for approval of individual undertakings. The generic terms of reference mechanism in the present bill does not do this.

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Recommendation: Adopt the EAAC recommendations on class and sectoral/class assessments. Amend the bill to specify a public process for developing and approving generic sectoral terms of reference as anticipated in clause 6(2)(b).

I would refer you to the EAAC report that Dr Byer just submitted. Recommendations concerning this matter are numbers 43 to 47 and 53 to 63.

Fifth, new discretionary powers for the minister and public servants: The bill adds many broad openings for the exercise of ministerial discretion, such as to determine what exemptions from key EA requirements will be allowed in terms of reference, subsection 6.2(3), to refuse to refer a matter to the board for hearings, section 9.1, and to limit what will be considered in cases referred to the board, subsection 9(3). It also anticipates that the responsibility for making many of these discretionary decisions will be delegated to public servants in the Ministry of Environment and Energy, subsection 11(2), and that parts of decisions may be delegated to the EA board or "another tribunal or another entity," section 11.2. Presumably these other entities could include senior officials of proponent ministries.

The usual argument for ministerial discretion provisions is to enhance political (elected official) control over the assessment process. The reality is that such provisions typically enhance the effective power of public servants, since no minister has the time to become familiar with

the substance of more than a handful of these discretionary decisions. The anticipated delegation of these decisions confirms that enhanced elected authority is not expected here.

The question then is whether giving more broad discretion to ministry officials and other public servants, possibly including proponents, will add to effectiveness or fairness or certainty or efficiency in the process. For a host of reasons, the most plausible answer is no. As noted above, the breadth of the openings will inevitably increase the contentiousness of the issues to be decided.

EA decision-making even at the ministerial level and within the relatively narrow range of discretion offered in the existing act has always involved difficult political pressures from within and outside government. Throughout the history of Ontario's EA process, dealing with these pressures has always been the main source of delay in decision-making. Broadening and delegating the discretionary openings will certainly add to the pressures and complexities of responding to them.

The recent Canadian Environmental Assessment Act was also full of discretionary openings when first drafted and introduced. Most of the provisions were eliminated in committee review by the legislators. Ontario's legislators would be well advised to take similar action on the present bill.

Recommendation: Amend the bill to reduce discretionary openings to the minimum necessary for applying the key elements of the process in appropriately different ways to different kinds of undertakings. Particularly worrisome discretionary provisions to be removed from, or sharply constrained in, the present bill include: section 3.1 concerning dispensing with Ontario EA requirements for the purposes of harmonization; section 3.2 concerning the exemptions of undertakings, proponents and classes of undertakings and proponents; subsection 6(3) in combination with clause 6(2)(c), clause 13.1(2)(c) and subsection 14(3), concerning terms of reference that do not cover basic EA requirements; subsection 9(3) concerning limiting the scope of hearings; section 9.1 concerning refusal to refer an application to the board; section 11.2 concerning delegation of parts of decisions; section 11.3 concerning amendment of decisions; section 27.1 concerning policy guidelines; and subsection 11(2) concerning delegation of authority to officials of the ministry.

A final observation: The current bill follows a long, if not entirely honourable, tradition. Public servants charged with drafting new laws have often written them to enhance their authority to exercise minimally restricted flexibility in the application of legal requirements.

Some flexibility is necessary since the laws have to apply to a range of cases and circumstances. But more flexibility typically means less certainty and less administrative efficiency, or it is a cover for an intent not to apply the law, which can be certain and efficient, but amounts to a legislated fraud.

The lesson of equally long experience is that clarity and flexibility need to be pursued together in open processes with maximum involvement of the affected parties. Efficiencies are to be gained chiefly through anticipation, integration and, where appropriate, devolution.

In EA, the main positive initiatives to reconcile clarity and flexibility stress anticipatory strategic or sectoral assessments; integration of planning, assessment and regulatory processes and requirements, covering various sectors, receptors etc; and greater emphasis on local involvement, such as in effects monitoring. It is disappointing to find no hint of these things in the present bill.

On behalf of Dr Gibson, I'd like to thank you again for the opportunity to speak to you today.

Mr Galt: Thank you for your presentation and thoughtful analysis. I'd like to refer to pages 2 and 3, at the beginning. Let me assure you the intent is for full environmental assessment, and it would appear I'm hearing from you concerns relating to the upfront consultation and the concerns of the public not fitting into the terms of reference. Once that's in there, would you feel more comfortable then?

We don't want to be going back and reinventing the wheel. If something's established and working, there's no point in carrying out a further environmental assessment on those activities. It's the activities that are not proven that we want to be looking at. If all of those are brought forward by the general public, would you then be more comfortable with the flow of this in the full environmental assessment?

Ms Wheaton: In addition to guaranteeing public consultation at the development of the terms of reference, there'd have to be the other matters regarding the substance of the terms of reference, the actual inclusion of the key EA elements, that would have to be changed as well in order to ensure that those aren't dropped off the table through the scoping unless there was full agreement.

Mrs Julia Munro (Durham-York): Thank you for your presentation. My question really relates to much the same issue, but I wanted to come at this question of the terms of reference and the development of them from a slightly different angle. I just wondered whether or not you see an opportunity — if there was agreement among the members, let's assume there's a public representation at that point — to take those particular areas, that is, focus more narrowly on terms of reference. Do you see that as a fitting way to deal with streamlining the whole process?

Ms Wheaton: You mean if people actually agreed to take off one of the key elements of EA?

Mrs Munro: Yes. In the hearings so far, one dealt with rail haul, and the idea whether you would have to put down truck transportation once again when there's so much information that supports rail haul over truck transportation, as a for instance. Do you see that as fitting the concerns you have raised?

Ms Wheaton: On one level, I think that's a possibility. I guess you run the danger of missing out on something that might come up later in the process. If all of the affected public was at the table, which is difficult to achieve, but if that was the case, then there'd be some basis for getting or buying in on the terms of reference, yes.

Mr Gravelle: Good morning. Thank you very much for your presentation. Certainly it's encouraging to hear Dr Galt make some reference to the fact that they are actually hearing what people are saying at the presenta-

tions in the sense of public consultation. I think what he was saying was that indeed there may be some amendments from their side that we can look forward to which will recognize that despite the fact that the material that goes out publicizing the bill talks about public consultation, the actual details in the bill itself just do not reflect that. It's very important that so many groups, including yourselves, have made that really clear because public consultation obviously is crucial. It's got to be real.

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Quickly, because we have very little time, you make reference to section 3 in terms of the exemptions that are possible. I just want to let you know that we've heard reference a couple of times in the last couple of days to the Ministry of Natural Resources perhaps, or in fact very likely, applying for an exemption once this bill is legislation to be exempted from the class environmental assessment parent documents. In your work with the group have you heard anything about this particular exemption, and if so, what would the ramifications of that mean if it happened?

Ms Wheaton: An exemption from a class assessment?

Mr Gravelle: Yes.

Ms Wheaton: I don't know that I've ever heard of that occurring in a direct way. It's more an exemption from an actual specific activity or project. There need to be criteria for exemptions and there needs to be a set of procedures set out that requires public notice and an opportunity for public comment, and about how the exemptions would be dealt with, and some fairly restrictive criteria, and that sets up a process for dealing with exemptions in a more meaningful way.

Mr Gravelle: We've had reference to that a couple of times. I was curious whether or not you had heard anything about that specifically, but obviously not.

Ms Wheaton: No.

Ms Churley: Thank you very much for your presentation. If you would, I'd appreciate it if you would thank Dr Gibson for his very excellent submission to us today. We're sorry he couldn't make it, but we're glad to see you.

There's not enough time to get into substantive questions, so I want to come back to Dr Galt's question around a full EA and the fact that it still seems to me, after all of the presentations and explanations about why it's so important throughout the setting of the terms of reference, particularly if the public isn't involved, that the key elements of the EA are not negotiable. If they are, I say again and again, the Premier's promise about having guaranteed full EA for a landfill will have been broken. I want to clarify with you once again, for Dr Galt's assistance, how important that key element is to keeping the promise of full EA if that is not amended.

Ms Wheaton: I think it's absolutely essential that the key elements of EA are part of this legislation because without them you don't get good decision-making on the environment, and that is really the ultimate objective here. If you don't include particularly a consideration of alternatives, you miss an opportunity to be making good decisions.

Ms Churley: What I'm trying to express here is that Dr Galt in particular, but sometimes other members of the

government, continue to say, "I can assure you that this bill will guarantee full EA," and that's not the case — and it's been pointed out time and time again — unless that section is amended. Either they're not getting it or it's a misrepresentation of what this bill is all about because it's very clear that if those can be negotiated off the table, it is not a full EA. We have to accept that as a committee and tell the truth about it.

The Chair: Ms Wheaton, thank you kindly for presenting this paper this morning. We appreciate it.

ONTARIO FEDERATION OF AGRICULTURE

The Chair: Our final presenters for this morning are from the Ontario Federation of Agriculture.

Mr Ken Kelly: The OFA is pleased to be able to come and spend some time with the standing committee on social development this morning. I'd like to introduce myself. My name is Ken Kelly and I'm vice-president of the OFA. With me are Paul Verkley, chairman of our environment committee, and Mary Lou Garr, a very active member of our environment committee.

With your permission, I would ask that we enter our brief in the record. That will absolve us from the need of reading it all the way through. I'm going to try and make some comments in about 10 minutes or less and then get into some questions the answers to which I will heavily rely on my associates for.

It's appropriate that the Ontario Federation of Agriculture provide comments on the proposed amendments to the Environmental Assessment Act, given that the farmers of Ontario, perhaps more than any other sector of our society, depend directly on soil, air and water resources to earn their livelihood. Farmers have a vested interest in ensuring that the integrity of the earth's physical environment is protected.

You can see on page 2 of our submission that we understand that the proposed amendments and changes focus on five general focuses on the Environmental Assessment Act. We support having the proponents prepare terms of reference, but it's incumbent, it's absolutely necessary, that the government and the public thoroughly review the terms of reference document to ensure that the proposed environment assessment is of sufficient rigour that all potential environmental impacts will be identified. Approved terms of reference that are inadequate will not provide useful direction to the proponent, nor will they safeguard our natural environment.

We strongly support guaranteed public consultation. However, for the public to be effective in commenting, the public must have access to funding which will allow them to critically evaluate the specific terms of reference under consideration. We recommend that proponents be required under regulation to provide some form of participant funding to individuals and groups that can demonstrate their capability to thoroughly evaluate a terms of reference document. Quite frankly, public comment on the environmental assessment document itself will need to be informed if it's to be useful.

Perhaps our greatest concerns are with the proposed time frames. We firmly believe that a quicker decision is

not necessarily a better decision. We're particularly concerned that these collapsed time frames are being introduced at a time when government staff levels are being reduced. We question how we can expect fewer people to process complex environmental assessments more quickly and do an adequate job of those assessments.

We believe the original purpose of the Environmental Assessment Act was to remove environmental decision-making from the political arena, and while we accept that the Minister of Environment and Energy is ultimately responsible for ensuring that the Environmental Assessment Act is properly administered, we have considerable difficulty with the minister of the day defining, on a project-by-project basis, the significant environmental issues that are to be considered by the Environmental Assessment Board. By definition, there is an element of discovery associated with a hearing, and that element will be completely lost if the hearing process is too narrowly focused.

Regarding the concept of harmonization, we want to caution that the government's goal should be to protect the environment, not to ensure that proponents receive project approval with a minimum of effort.

In conclusion, we believe that a well-administered environmental assessment process is absolutely critical if our physical environment is to be protected for present and future generations. We believe it may be in the best interests of farmers as well to investigate the possibility of having the OFA serve as a commenting agency on rural project proposals requiring an environmental assessment.

With that we'll just open it for questions and we'll do our best to answer whatever questions we're asked.

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Mr Dalton McGuinty (Ottawa South): Thank you very much for your presentation, all of you. It's an extremely enlightened presentation. There's an important lesson to be learned here by all of us, but particularly the government members, and I say this with all due respect. We're always trying to compartmentalize, and it's easy to be dismissive and say the only people who have anything to say against this bill are those who have an environmentalist bent of the tree-hugging variety and those kinds of things.

But you, on behalf of the Ontario Federation of Agriculture, are telling us that it's important to have public participation, it's important to have intervenor funding, it's important for the public to lend shape to the terms of reference — you stop me if I'm mistaken here — and that timely decisions are important but let's consider the downside connected with that. If we're dealing with matters of substantial complexity, to be hamstrung by a deadline may not make sense. Furthermore, how are we going to respect those deadlines at a time when staffing and funding to the ministry is being reduced?

You're telling us, and I think quite rightly, that there's an element of discovery connected with hearings and that, try as we might, sometimes new things crop up at the time of a hearing and we ought to maintain sufficient flexibility to deal with that and treat the new information.

Finally, you tell us that harmonization is fundamentally sound.

I want to probe a little bit further in that connection. One of my concerns is that Bill 76 as it stands right now permits harmonization to take place. Furthermore, there's no obligation on the part of the minister to ensure that our standards, if they are the higher standards, are those that are to be respected when it comes to an environmental assessment. Would you not agree that if we've got to harmonize — no doubt we want to relieve proponents from the obligation of having to go through some kind of a duplication in process which is expensive and time-consuming, but if we have the more rigorous standards, then should there not be an obligation on the part of the minister to insist that our standards have paramouncy?

Mr Paul Verkleij: I think we're all interested on an environmental protection basis, but I think in a lot of the environmental assessments we see the standards are ultimately the goals of the people objecting to any given proposal. It seems to be a very high standard, and maybe unrealistically high, the expectations of what impact society will allow. I think this has slowed down the process to a point where it simply doesn't function any more.

We've had a process in place that now puts into accessibility something that can delay on an ongoing basis, and it gets away from the original concept of what do we do as a society to make sure that projects are going to be friendly to the environment, as friendly as they can be? Any amount of standards is always going to be questioned. If we say it's a higher standard, interpreted by whom? Simply putting on more restrictions — we, I think, have lost sight in a lot of cases of the end result of any specific proposal and why it was generated in the first place. Was it truly necessary?

If there is a general consensus that it's a direction we need to go in, we certainly still end up with a process that doesn't become solution-oriented and certainly makes no assumption that we're allowed to do some negative things to the environment and that may be the best way to handle the problem. We end up running around regulations — whose is the tighter regulation, whose is the better for the environment — and it becomes that political nightmare of bouncing around who's cleaner and who's better and who's allowed this and who's allowed that as opposed to, have we actually done anything to deal with the problem at hand? This is why we'd be somewhat reluctant to say that we always will stand on the side of the one that has the most restrictions.

Mr McGuinty: What prompted Ontario's farmers to take an interest in this bill, come forward here today and register their concerns with Bill 76?

Mr Verkleij: Probably because we own most of the property that most of these projects are proposed at. We're looking at dump sites. We see very few cases in EA where there are proposals to have a dump site within an urban municipality's boundaries. Transportation corridors, service corridors, pipelines and hydro lines all tend to come through agricultural areas. As farmers, we deal with impact on the environment. It doesn't seem to be a very fair system.

We're here also because a lot of our members are part of the smaller municipalities that are actually trying to open up dump sites. It's taxpayers' money that's being spun around, and if there's one common complaint — the reason we're here — it's that we're not in favour of the \$50 million, \$60 million, \$100 million that has been spent over the last five years with absolutely no result except for upsetting communities, putting unrealistic expectations on some groups and individuals and having a very negative impact on rural communities. The whole process is badly flawed.

I think that's one of the reasons we're looking for solutions, and we'd be the first ones to say that there are not a whole lot of easy ones out there. There certainly isn't a consensus within the farming community that says, "We will allow this much," or "We will allow this type of waste management," or "We will allow this kind of corridor." Certainly there's frustration that the system is not working, and part of that is the expectations of the system.

Ms Churley: It sounded interesting and not surprising that you mentioned the frustrations you had with site selection under our government. I think it throws into sharp reality how difficult it is to deal with waste. For every government for a long time now it's been one of the more controversial, difficult issues to deal with.

The interesting thing about some of the changes this government is making to the bill is that it makes it even harder. I know it was a very frustrating experience for many people but at least, as was just said by Mr Byer, who is past chair of the Environmental Assessment Advisory Committee, under Bill 143 it was developed through the open legislative process. The problem with this bill, as you have rightly pointed out, is that you're not going to have even the same say you had during that process. You've pointed that out in your documentation.

I come back to the terms of reference. There's a real problem with that now in that it's not prescribed in the bill that the public be involved in that. It's an interesting problem because it's the most important part, in a way. It's possible, as I've said many times and as others have said, that key elements of the act can be negotiated off the table during that process, yet it happens up front before we really know what we're dealing with. It's just the very beginning of the process, but the studies aren't done, new information can come up later and the ability to perhaps change those terms of reference would be crucial. It's a major element of the new bill that's really flawed in terms of public participation and in terms of your say in how possibly, at the end of the day, the EA is scoped.

Could you comment on the implications for some of your groups? Supposing you find out, if you're lucky enough to look and somebody sees on the Environmental Bill of Rights registry, "Oops, there are terms of reference going on here" — the implications for a farmer in his or her life down the road if an EA is be scoped early on without his or her participation.

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Mrs Mary Lou Garr: I'd like to answer that. I agree with you. I think there is a strong need for public involvement much earlier in the process than I see in this

bill. I was unable to see anywhere in there any requirement for consultation or participation during the development of the terms of reference. I know that some environmental decisions have come down in the last few years that have strongly criticized proponents for not involving the public early in the process.

With these terms of reference, I like what I see there and I think it's an opportunity for the community to really be part of the decision-making early in the process. I would like to see something enshrined in this act requiring a proponent to involve the public at that stage.

Linked with that is the need for some form of participant funding, and I draw a clear distinction between participant funding and intervenor funding. I think intervenor funding kicked in far too late in the process and was spent primarily on legal assistance. The true value of some sort of participant funding is that it would allow the community to participate fully, to have the ability to influence early decisions. If that were enshrined in the legislation in some way, I think many decisions that came out of that very early work might make the hearing process much easier at the other end.

That's what everyone is trying to do here: to get a more efficient process. We certainly agree with that. These 10-, 12-year environmental assessments have a big social impact on the agricultural community. If we could get some early decision-making that is good, when you try to scope the hearings later some of that might make sense because there would be some buy-in from that community.

Linked with that is the need for a good community agreement of some sort, and I see all this developing through early participation. Paul mentioned that there certainly are going to be negative impacts with some of these proposals. Then let's sit down as a community with the proponent and decide how we mitigate that, how we ensure that the community comes out of it in a positive manner so that the proposal can be well managed with the community. That's only going to occur if there is early participation, and we believe we need some form of participant funding to be part of that process.

Mr Pettit: Thank you for your presentation. I'm encouraged by your comments on early public involvement. We've heard many comments over the last couple of weeks, I think mostly positive, on the amendment to allow for earlier mandatory public involvement. I think Mr Galt is on record as having said we'll be supporting regulation that will enshrine this somewhere down the line.

Having said that, is it the feeling of your group that these provisions for mandatory public involvement, especially at the terms of reference stage, will encourage the identification and resolution of issues earlier on in the process that will better enable the proponents to re-examine possible alternatives?

Mr Verklej: I could maybe answer that one. The system right now is broken down because of lack of flexibility. I think you have the most flexibility going into the proposal at the very early stages. If we're locked into just an adversarial position on a lot of these issues, we're not going to have gained a whole lot; we'll just have moved the argument up further ahead. Until we get to a

position where the whole process is solution-oriented, I don't see how we're going to avoid those problems. In the agricultural community we maybe have one statement that says, "We may not be easy, but we can be bought."

Realistically, if those types of solutions were available early on in the stage, which right now basically are not, if Metropolitan Toronto wants to get garbage out to the Adams mine or wherever, priority number one says we're going to do it in such a way that it will not have a negative impact on the environment, it will not have a negative impact on the community that we're going into, therefore we cannot discuss some of the problems and real concerns. We're going to have expert after expert lined up to say, "No, this will not happen."

We have very expensive promises being made that we must react to as a community that's going to be impacted. That's where this intervenor funding is required, because then we go on to different players. If you have very heavy-hitting players with deep pockets or whatever and you have a rural community that's going to be impacted and all we end up talking about is these promises that are made by the proponents instead of saying, "Look, let's sit down and say what the real issues are that affect us," you simply can't turn that into, "How do we deal with the negative impacts that we see on this proposal?" because the argument then is that there will not be a negative impact, and we end up spending five years talking about impacts or no impacts in the same time that we probably could have come to some solution. Nobody wants to live beside a garbage dump, but if there's a proper package of community compensation, some of the people say, "I would be glad to own land next to a garbage dump in Ontario that has a proper community agreement where some of the problems are being addressed."

The Chair: Dr Galt.

Mr Galt: For clarification purposes?

The Chair: For clarification purposes, if you want to make a quick comment.

Mr Galt: If I may, because I'm not on record as saying we have agreed; I'm on record as asking people, if that were in place, would they be more comfortable? I certainly, if not agreed — it will be a democratic process by the government members of this committee of the amendments we put forward and will table on Friday.

Mrs Munro: I appreciate the comments you've made. I want to come back to the one that seems to have taken up the attention of so many groups: the issue of a meaningful public role. I wonder if you'd agree that, as you suggested a moment ago, you would recommend that it be in the legislation and whether you see that any public role implies public responsibility. By that I mean that many people have talked about this public role, many people have questioned the definition of persons who may be interested and many people who, in the experience they've had in the process, have commented on people who join in late in the process.

My question comes to you in the sense of, if we were to assume this public role up front, is there also incumbent upon them a public responsibility in terms of their commitment to the whole process? Clearly, the government has a commitment to the process and the proponent. I think it's necessary to get some input on exactly what

is the public's role and responsibility and how you see this playing out.

Mr Verkleij: Most of the time we're talking about a public problem and usually we've got the government being the proponent even though it might not be on a site-by-site basis. In general the provincial government is looking for a dump site; the provincial government is looking for a power corridor. As a people we want to see a project go ahead. Then we have the minister being given so much power as to direction of the project going in through an environmental assessment. Certainly as land owners we come back and say: "If that's the 'public,' how do we protect ourselves?" In a geographic area that includes a community of some sort, and there's that division between the larger public body which seems to have all the cards, and we're asking for more power to counterbalance that. At the end of the day, is it still going to be realistic that we haven't just overly politicized the whole system?

Mrs Munro: I understand that concern. My question really comes from the need, as you expressed, to legislate a public role. If that's the case, what specific things do you see that should be included in legislating a role for the public?

Mr Verkleij: It really needs to be at some point a very proactive role where changes can be made, where there is some flexibility, where some input will be recognized and dealt with as opposed to going indirectly on an adversarial basis, because then it's just a fight against the strongest, who wins and who throws the most resources into it as opposed to, if we had a problem, how can we come up with some reasonable solutions? That's part of the process, and everyone who's going to be affected needs to have access to that at a very early stage.

Mrs Garr: I think you're referring to how you identify the public and what public is involved in this. The federation feels strongly that it's the directly affected public we'd like to see have this early involvement, and that directly affected public would also have a strong role in developing with the proponent some sort of community agreement that would be seen as acceptable to both the directly affected public and the proponent.

In the event you could develop that community agreement, which would include elements of monetary compensation, I'd like to see drawn into that monitoring, mitigation, community benefits, that sort of thing, a strong, legal community agreement which would be negotiated with the affected public, and I see them as the directly affected.

I also wonder where the negotiation and community agreement fits into this new legislation. I know that the government has set up a task force or a committee of some sort, which I don't believe has met yet, to look at compensation and how those issues will be dealt with. How will that fit into this legislation? I haven't seen it here at all.

Mr Kelly: I build on what Mary Lou has said, that it's the affected people whom we consider the most important in this. I think that historically we have vastly overused the concept of stakeholders. I've often said that many people want to hold the stake, but very few of us actually provide it. It's those affected people we're very concerned about.

As for the public's responsibility, I think the affected public has a responsibility to get its act together at a very early time in this to be prepared to get into a meaningful discussion. That's where and why we started talking about the concept of participant funding, because it makes a sham of a public consultation process when one side can go out and provide for themselves a hydrogeologist and the affected people, the people who, if I could use the phrase, are being dumped on, for instance, don't have the wherewithal to get expert advice and provide the checks and balances that are required in the process.

The Chair: Mr Kelly, Mr Verkley and Ms Garr, I want to thank you kindly for being here this morning, making the presentation and sharing your views with us.

Mr Kelly: Thank you very much, Mr Chairman. We appreciate being here. If you need clarification or have any questions, you could contact either the three of us or through our office.

I just jotted down a little something before I left the office this morning. Certainly there has been a great deal of value in the environmental assessment process. I hope we don't lose sight of the value of a good process by only looking at the price of it. Somewhere within this concept of price versus value and cost versus benefit and risk management we have to protect our natural environment.

The Chair: Well said. Ladies and gentlemen, we will recess for lunch, but our researcher, Ted, would like to make a few comments.

Mr Ted Glenn: Lynn distributed this morning, for your edification, a summary of hearings up to and including yesterday. If there are any questions, comments or concerns, get hold of me.

The Chair: We'll reconvene at 1:30 sharp. Thank you.
The committee recessed from 1205 to 1332.

INTERNATIONAL ASSOCIATION OF PUBLIC PARTICIPATION PRACTITIONERS, ONTARIO CHAPTER

The Chair: The International Association of Public Participation Practitioners: That's a great acronym. Thank you for taking the time to be with us. You may proceed. Would you begin by introducing everyone for the sake of Hansard and the record.

Ms Cynthia Rattle: We'd like to thank the committee for this opportunity to speak to you about Bill 76. My colleagues Susan Thurston and David Hardy, and myself, Cynthia Rattle, are here to speak on behalf of the Ontario chapter of the International Association of Public Participation Practitioners, or IAP3 for short, as we refer to ourselves. We'd like to give you just a brief background about ourselves and the organization first.

Miss Thurston has over 10 years of experience in public consultation and is currently with Ontario Hydro. She has developed, coordinated and implemented community relations and public involvement programs for route and siting projects. She is also a founding member of the Ontario chapter of IAP3.

Mr Hardy is a principal with the consulting firm of Hardy, Stevenson and Associates, and has over 20 years of experience with site and route selection and project

and planning matters under the Environmental Assessment Act. Mr Hardy has provided public consultation and environmental planning evidence to every board in Ontario.

I am an Ontario planning consultant with over 12 years of experience in the design and coordination of public participation programs for waste management, transportation and pipeline projects proceeding under the Environmental Assessment Act. I have also provided advice on public consultation guidelines for MOEE.

IAP3 is a professional organization with over 100 members worldwide. It includes two chapters in Ontario, one of which is centred in Toronto. The 200 members of the Toronto chapter are consultants, employees of public and private utilities, waste management companies, natural resource companies and the public sector. Our members have been involved in the public participation component of almost all the major projects subject to environmental assessment across the province in the past 20 years. These projects include timber management plans, waste management plans and landfills, highway developments, energy sector pipelines, transmission lines, generating stations and urban infrastructure.

One of IAP3's mandates is to promote the concepts and benefits of involving the public in decisions that affect them. To this end, our organization undertakes to comment on government initiatives. In the past, for example, we have commented on the Sewell commission's proposed changes to the Planning Act. We are grateful, then, for the opportunity to comment on Bill 76. Dave Hardy will now provide our comments, which focus specifically on the public consultation aspects of Bill 76.

Mr Dave Hardy: You've received copies of our brief. I have several general comments and a number of specific comments. I'll speak for about 10 minutes.

In general, we're very pleased and support the informal inclusion of public consultation in the act, and early public consultation. We're also pleased in general with the continuation of the focus of the act on the problem and opportunity, and we're pleased with the continued wide definition of the environment.

We have several areas which we feel require clarification or enhancement. I'll be discussing an overview of those areas and pointing on occasion to specific parts of our brief.

The first area is the role of guidelines, in particular public consultation guideline documents. As seen on the final page of our brief, there have been a number of guideline documents addressing publication that have been issued by the Ministry of Environment and Energy. These have been very helpful to proponents and to the public and have helped us to understand the scope of the public consultation expected. We feel the act should formally refer to the guidelines about the expected design and delivery of public consultation programs.

In our brief on pages 3 and 4 we paraphrase the purpose of public consultation as already exists in guidelines. We feel that purpose has merit. For example, we feel that public consultation should help a proponent to identify and address issues before decisions are made and before all sides are established and positions

entrenched. Public consultation should help to improve understanding between a proponent and a community. It should help a community develop a sense of control over risk and management of that risk. It should help a proponent to consider a broad range of issues, options and solutions and hear a broad range of opinion about the options before deciding on a course of action. Public participation should help to improve decisions by steering the undertaking towards an environmentally and socially acceptable path. While there are no guarantees, public consultation is a method to reduce and resolve conflicts that arise when multiple interests are involved.

In sum, these guidelines exist, they have merit, and we'd like to see that they're referred to in the act.

Finally, we also feel that section 4 of the act should be reworded to read that nothing in the act would prevent a proponent from conducting more consultation than the minimum established under sections 6.1 and 6.4, subsections (2) and (3). Thus, proponents should know that they don't necessarily have to just choose the minimum, that they can do more than the minimum required under the Environmental Assessment Act.

The second area of concern is the public consultation on policy issues. In our experience, policy issues require special treatment when they come under the act. Often we've found that transportation projects involve questions of transportation policy. Energy projects are intertwined with policy issues. When we build a water pipeline, it involves questions of policy. When we go to site a landfill, it involves questions of waste management policy. These are difficult items to address currently in the act and we think the act can be improved and enhanced somewhat to help to better address these issues. To do this, we've recommended the addition of a sub-clause 6.2(3)(c)(iv) to ensure that all relevant agencies and government departments and other organizations are consulted regarding policies that may have under their auspices that may be affected by an undertaking.

We also understand and have seen that policy issues surface late in EA processes. At worst times, policy issues will occur at a hearing. Often policy issues may surface after approved terms of reference have been issued as well.

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At the minimum to address this matter, our second recommendation is that once the environmental assessment is prepared in accordance with requirements of sections 6.1 and 6.2 of the draft Bill 76 — that when the act is submitted, there also is ensured that the proponent consults municipalities so that if they have a policy item under section 6.3, they can address the act once it's been submitted. So we've suggested an amendment to sections 6.1 and 6.2 to add further consultation with the public under section 6.3.

We support the ability of the minister to refer policy matters to other tribunals. This is a useful addition in the act. However, we also feel the EA board is fully equipped to direct policy matters to other tribunals as well, or deal with it directly.

We also feel the public should have the ability to comment on the terms of reference of the environmental assessment study. To this end, our next recommendation

is that the public should have the opportunity to provide input on the draft terms of reference.

We feel the EA board should be the first and primary forum for a scoping hearing before the terms of reference are approved by the minister or directed to other bodies. The use of a scoping hearing under the new Environmental Assessment Act at the federal level appears to have a fair amount of merit in narrowing issues and providing some input on those issues before the terms of reference are established.

The advantage under this act in providing scoping under the Environmental Assessment Board is that the board is able to hear evidence under the Statutory Powers and Procedures Act. The board has experience in scoping matters, and this is both the EA board and the Ontario Municipal Board, and other boards such as the Ontario Energy Board have had very good experience, in my opinion, on scoping issues that they are to address.

Our recommendation is that the Environmental Assessment Board and also a consolidated joint board should have the continued capability of defining issues that they — oh, sorry. Let me come to a full stop. That the board have the ability to scope issues before these issues are referred to the minister for the minister's resolution of these issues under the terms of reference.

Our next recommendation deals with issues that come up during the hearing and the definition of those issues by the minister. We feel the EA board and the consolidated joint board should have the continued capability of further defining issues they hear based on evidence they hear and the advice from the minister. However, we feel the advice from the minister should be in an advisory capacity only, since the board is hearing the evidence and that's being cross-examined and being tested, whereas the minister doesn't have that advantage. On the other hand, the advice from the minister is very important and should help to determine the scope of the hearing by the board. We've suggested specific amendments to deal with this in section 9.3 of our brief.

The next issue that we feel is important to us and could help with the enhancement of the act is the need for broad-based consultation with the public. We are concerned about the possible narrowing of the definition of "the public interest." We've often seen in our projects that the public at the beginning of an environmental assessment process is a different public than the public at the end of an environmental assessment process, and it's very difficult to define that public at the beginning.

We feel, at the very minimum, there needs to be some broad front-end thinking and consultation at the beginning of a process to make sure that all people who may be interested are involved. In support of this, we have reviewed other briefs and feel that the brief prepared by the Canadian Environmental Law Association has some merit in defining the public as all people reasonably interested in or affected by any matter arising from the proposed terms of reference of the environmental assessment, whether or not the persons have a direct personal pecuniary or proprietary interest in the matter.

The next area where we think the act can be enhanced is to allow for greater provision for time-outs during the EA process, and particularly during the hearing. If there are issues that come up that are of concern either to the

public or proponent, there should be some provision for either the public or the proponent to resolve those issues without necessarily jeopardizing the clock ticking in the process, and particularly for the proponent not jeopardizing the overall opportunity of getting the EA approved.

To not allow time-outs can be very costly for a proponent if there was a major issue that arose that wasn't addressed. It also is very difficult for the public if they felt an issue was very important and should have been addressed and it doesn't make for good relationships between the proponent and the public in the long term.

We also feel that the next issue is the need to provide time and support for the public to review EA documents. In our experience, after a long EA hearing on a complex matter — an example I'm personally aware of is the Laidlaw rotary kiln study done in Sarnia. At the end of that process, there were four volumes of very complex health and safety and geotechnical and chemical air dispersion data and there was no way the public could review that in their 30-day period. There's also no way that anybody had the expertise in the area to be able to deal with and responsibly comment on those reports, as the proponent wanted. The proponent in this case was very progressive and assisted the public through a peer review and relationships have been generally good.

So we're suggesting that there be provision for an extension of the peer review process to make sure that facts are not overlooked, that local knowledge is provided and that peer reviews occur on the information prepared under the EA.

Our next recommendation is that in general we support mediation provisions of the act under section 8, and also the ability of the Environmental Assessment Board to act as mediator. However, we feel that alternative dispute resolution should be available throughout the process. There should be guidelines stipulating when mediation should be used. Our concern is that if there are situations where legitimate issues that are raised by either municipalities or agencies or the public about alternatives, then these issues shouldn't be mediated away; they should be discussed and studied.

On page 9 we've recommended appropriate changes to address this in section 8.1 of the bill, and this is that mediation not be defined to preclude public discussion of alternatives.

Generally, we support the reconsideration of alternatives under the act. However, we again feel that the act should allow for the public to be notified if there is a reconsideration of an alternative. A good example of this is the north Simcoe landfill, where, after the initial hearing, there were further studies done. At that point it would be quite appropriate for the public to be brought back into the process.

Next, a public consultation should occur on changes to the undertaking on section 12. Again, the proponent should make sure they consult the public if there are significant changes and consult on the second submission of an EA, if that occurs. In reviewing the class EA process, we feel that public consultation under the class EA is working well. We have no further comments.

The next area is the delegation of the minister's powers under section 31. In general, we feel it's too

broad to meet the objective of fairness for the public and proponents. We feel that there needs to be an appeal procedure in place when powers have been delegated to staff and that the appeal needs to be decided by either the minister or the board.

So our next recommendation is that any decisions made by employees or a class of employees that have been delegated power should have an appeal procedure.

That finishes my review of our brief. In general, we are pleased with the public consultation provisions of the act and we wish to thank you for allowing us to speak to you. We'd be pleased to answer any questions or respond to any comments.

Ms Churley: Thank you very much for your presentation on the very important issue around public consultation. I think you've quite rightly pointed out, as have most people who came to speak to us, that although the government says that there's public consultation at the very beginning of the process, it is not part of the bill that people be consulted during the negotiating around the terms of reference. I believe that you are recommending that this be changed and that this be clarified in the bill that the public would be consulted and involved during that process.

Mr Hardy: Yes, very much so. The Ontario Municipal Board, during an issues hearing, does this quite well. The Ontario Energy Board does this quite well. We don't see why, in our situation, the EAB can't be a good forum for providing and researching information on terms of reference.

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Ms Churley: Another concern around the negotiations around the terms of reference, of course, is that even if — and of course, people should be involved, people who have interests. I'm glad you made a comment about the definition of who these people are and that existing — I believe you said, there are existing guidelines there and in fact we've been now provided with those and it should be enshrined in the legislation.

But even if you have the public involved in that process, the problem is, when you're setting those terms of reference, it's at the very beginning of the process and to a large degree you don't know what's going to come. As you mentioned, some of these hearings — anything that gets sent to an EA by its very nature is complicated and often controversial. You're setting the terms of reference which would be binding and the problem is there could be all kinds of information after the studies are being done and more information about what's involved in this particular undertaking that could get left out because people just don't know it's going to come and it's going to be a factor.

What would you advise the government around dealing with if they want those terms of reference to be binding yet there could be complexities that aren't foreseen at that stage? The public, really, would not have the opportunity at that very early stage to know about some of the complexities which might come up.

Mr Hardy: I think the Canadian Environmental Assessment Act has also wrestled with this particular issue and they've put an awful lot of weight on making sure there's a very thorough scoping process at the

beginning. We're recommending, to begin with, that the board be involved in the scoping process and also the minister and minister's staff and so on. At the outset there needs to be very careful and thorough consideration of all the issues that might be brought to bear in defining the terms of reference. I think there's also an obligation on the proponent, as the EA process proceeds, to make sure that as issues legitimately arise during public consultation processes they're studied and brought forward. That typically occurs during the EA.

Finally, I believe that in the actual hearing itself and during the ministry review, we've suggested that there be checks and balances to allow the minister to allow the proponent time out if an issue happens to arise without necessarily penalizing the proponent; on the other hand, allowing the board during a hearing to not necessarily be totally constrained by the terms of reference of a hearing or the terms of reference of the study if there's evidence that's been brought forward under cross-examination that survives and should really be addressed to make sure there's fairness.

Mr Ed Doyle (Wentworth East): Thank you, Mr Hardy, for your presentation. I was interested in your comments about the need for time-outs or additional consultation. I'm wondering if you can tell me in your experience, if people are involved in the early process, during the terms of reference stage, if this will eliminate the need for additional time-outs or if the likelihood of issues arising will be lessened. I'm wondering if the hearing process and the entire process can be shortened.

Mr Hardy: I think certainly the broad consultation with the public at the beginning is going to go an awfully long way to narrowing issues and eliminating the possible need for time-outs, as those issues are identified. I think what we're recommending, though, is that there still be a bit of flexibility in that act for issues that do arise. The EA process is a logical kind of systematic study process where, when you have various professionals looking carefully at a land area or an issue, they often do identify issues that do have to be researched. I've seen it many times.

In addition, I've been at a number of hearings or in EA public consultation processes where the public has pointed something out that we, as professionals, all completely missed, and we have to deal with it. So there's an issue of fairness where in that instance all the professionals know on both sides that that issue has to be dealt with. The boards know, the lawyers know, but the process has to be flexible enough for somebody to say, "Okay, let's just study this a little bit closely," so that's why we're suggesting the time limit. I agree with your point that if there's good consultation at the beginning, it should virtually narrow or almost eliminate the need for time limits.

Mr Stewart: My comment was much the same as Mr Doyle's, but I'll just go a wee bit further. Time-outs should have time lines?

Mr Hardy: Yes, and they should be linked to the — again, the board and MOEE staff have very good experience. If there's a need for an additional hydrogeological study, for instance, generally they have good experience of how long that will take to do, so this shouldn't be an open-ended process at all.

Mr Galt: Thanks for your thoughtful presentation; very interesting. I'd like to explore your comments just a little bit. You supported the idea of referrals on the part of the minister, particularly to tribunals, and we were hearing this morning from other groups who were objecting to that opportunity or that ability within the bill. Could you explain why you're comfortable with that, why you like that idea? I'm curious.

Mr Hardy: Yes. I guess it's based on my experience of dealing with a number of EAs where I have either worked with a proponent or been on a peer review of what the proponent has done. If it was a landfill, for instance, I've seen a proponent assume that the landfill is simply the matter of finding a site, doing proper studies, doing the EPA studies and having it go through, but if, unfortunately, that proponent was doing it in a county that didn't have a waste management master plan, it's the policy of the province to ensure that there are waste management master plans in process, and unfortunately, the proponent got caught up with the whole policy process. That cost a lot of money for the proponent.

In that instance, it would have been very nice for the proponent if somebody at the front in the process could say, "Hold on, before you spend \$6 million or \$12 million trying to get the site approved, this should be referred either to another organization to review the policy matters," or addressed in some other way before the proponent has to deal with it.

Another example would be with an Ontario Hydro demand-supply plan. Those plans do come under the act, energy plans, water plans and so on, and there needs to be considerable thought about where that gets approved. If it goes to the Environmental Assessment Board, for example, maybe the EA board is not the body to be dealing with that. Maybe it should be a select committee. Maybe it should be a special commission or inquiry to deal with that. So that's my experience that I bring my opinion on why I'm comfortable with the referral of matters to other policymaking tribunals and bodies.

Mr McGuinty: Thank you very much for your presentation. The International Association of Public Participation Practitioners — maybe it's appropriate for me to ask this of you. One of the things that we've heard here time and time again — if we didn't know it at the outset, we certainly understand it now — is that it's important and in the greater public interest and in the long-term interests of the proponent itself, himself or herself to involve the public, probably sooner rather than later. Have you anything to add to that, anything in terms of any reasons for that that we may not have heard about to date? By that I mean let's say that I was of the view that the public was an obstacle to be overcome rather than a resource to be tapped and let's say that I felt I had all the information and the matter was too complicated and they couldn't understand it. How would you respond to me?

Mr Hardy: I've witnessed a broad spectrum of successful and unsuccessful public consultation efforts. I would say that in some of the more unsuccessful efforts, there were issues that perhaps were out there and a minimal amount of effort to try to resolve them at the front end. Those issues only swelled to involve all sorts

of agencies and politicians, and ultimately it's costly for everybody in the long run.

The better case is that there's a very good series of examples of voluntary siting in Canada and in Ontario, where proponents have taken public participation by the horns and said, "We're going to do this seriously and we're going to do it so that we're listening carefully, that things are heard, are going to be part of our process." We've had a voluntary low-level radioactive waste site in Chalk River, Deep River. That's a voluntary siting process. It wasn't kind of, "We'll force this through." We've had the Manitoba hazardous waste facility being voluntarily sited. We've had the Alberta waste facility being voluntarily sited.

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On the private sector, again, Laidlaw is probably going to get an expansion of a hazardous waste landfill down in Moore township on a voluntary basis. These are good examples where they've taken a very serious effort to consult the public as thoroughly as possible. Each proponent has got some good gains in terms of cost-effective processes, time-effective processes and overall good relationships with the public.

Mr McGuinty: Thank you for that answer. Did you make reference in here to intervenor funding?

Mr Hardy: No.

Mr McGuinty: Is it realistic to talk about consulting the public and allowing the public to bring to bear everything they could bring to bear if they don't have the funds to retain the necessary expertise and possibly legal counsel?

Mr Hardy: There's a difference between intervenor and participant funding; we're recommending more participant funding.

Mr McGuinty: Could you just distinguish between those two for me?

Mr Hardy: Yes. Participant funding occurs typically during the EA process, well before a hearing. It's when the proponent provides money — Laidlaw, Hydro, many other organizations — gives money to members of the public to, at times, hire lawyers, although that's more of an exception, but particularly to hire consultants to be part of the review process. A good example is the Taro quarry landfill. They've had a public or participant funding process before the hearing.

Intervenor funding is after the EA has been submitted and has been referred by the minister to a hearing. At that point, all positions are hardened and most of the money goes to lawyers and money is provided to consultants. It's an advocacy win-lose situation at that point. You're not consulting the public any more; you're into a legal hearing at that point.

The Chair: Thank you very kindly for being here this afternoon and making your presentation.

CANADIAN ENVIRONMENTAL DEFENCE FUND

The Chair: The next witness is the Canadian Environmental Defence Fund, Mr Donnelly and Ms Kempton. Welcome. Thank you for joining us this afternoon.

Mr David Donnelly: Thank you very much for inviting us to appear. I propose to use our time with a

20-minute presentation split between myself and Ms Kempton, and then we've allowed for time for questions. Thank you for both opportunities.

We are appearing here today on behalf of the Canadian Environmental Defence Fund, which we refer to as the CEDF, a group that was formed 11 years ago to provide funding and legal, scientific, planning and engineering expertise to groups pursuing nationally significant environmental law cases. Over the years, this mandate has changed because citizens in other provinces and engaged in the Canadian environmental assessment process have often been short of adequate resources to participate effectively or fairly in environmental assessment hearings, and so our scope has expanded. This gives us some expertise in the area of intervenor and participant funding, and we'll be addressing the absence of any provision for that in our presentation today for Bill 76.

The Canadian Environmental Defence Fund has worked with numerous citizens' groups over the years that have been defending the public trust: cod stocks off the coast of Newfoundland; people concerned about the illegal trade in wildlife parts; groups concerned about fisheries in the Northumberland Strait, opposed to the fixed link to PEI. In almost every circumstance they have been engaged in some sort of process, whether the courts or quasi-judicial tribunal proceedings, such as environmental assessment or municipal board hearings, and have often run up against problems both with the process and with finding resources. We have experienced all sorts of different problems, and they form the basis of our criticism of Bill 76.

To start with, we have several general concerns with the current approach. The first is that there has been inadequate consultation with both affected parties and public interest groups in the compilation of these recommendations. For example, there is no clear determination of what the real costs of environmental assessment are. We think this particular bill is hasty in that the public hasn't been provided with an adequate explanation as to why these changes are necessary. For example: What is the cost of one hearing day? What is the cost of hearings versus not having hearings or not conducting environmental assessment at all?

There are numerous examples of failing to apply environmental assessment costing the public substantially more than applying assessment and coming to a reasonable and independent decision. I'll give you two examples. First, in Ontario the Darlington nuclear power plant was exempted from environmental assessment. I don't think there are too many people who agree that was a good undertaking.

In the case of the Newfoundland cod stocks, which I've already mentioned, there was a federal court application made in 1989 insisting that the licensing and quota-setting for the fishing of cod off the coast of Newfoundland and Labrador be submitted to independent review. That application was denied, no assessment was ever held and now the federal government has paid out \$2 billion in compensation and will likely pay out much more for the loss of the cod, whereas a moratorium, which surely would have been declared through an assessment process, could have saved some of that money. The failure to

apply adequate assessment wound up costing far more than simply not applying assessment.

The first recommendation is that you should scrap this process and start again with adequate consultation. There are no opponents to reforming environmental assessment; there are only opponents to reforming it poorly.

We also think the mandate to carry this out hasn't been well established. As you know, the environment wasn't mentioned in the Common Sense Revolution. The thrust of these changes cuts against the *raison d'être* of this government, which is to return more power to the public, give the public more rights and divest elected officials and the bureaucracy of authority over the environment and the public trust. What you are doing, perhaps inadvertently, is vesting a great deal of authority in elected officials. Even you can imagine a time perhaps in the far-off future when a Brown Horseman of the Apocalypse Party could be elected that would have environmental values you'd find objectionable, or perhaps there might a left-wing party that might be returned to government and would want to build all sorts of crazy public works projects with little environmental justification. This bill invests so much authority in the minister or in the bureaucracy that the public is almost without tools whatsoever to stop them. Is that really the mandate of this government?

Third, there's very little cost accounting to these changes. With your regulatory efficiency undertakings, you are requiring that there be an eight-page summary of the rationale for any new regulation. Has that been done in this case? Are there real efficiencies or savings to be gotten from this proposal? I would like to see those changes even before we have these public hearings so that I know whether the stated purpose of this, which presumably is to save money, is actually realized by it. I certainly haven't seen it and we weren't consulted on it. That is a major failing.

I should mention one last point, and that is that in the United States there's an election campaign under way, and I should note that both parties consider it prudent to consider protection of the environment in their platforms. Not only is it a political issue, but mainstream business in America has recognized that deregulation is not in its best interest. Several weeks ago, when the US Congress brought its session to a close for the summer, it was considering two bills, an anti-terrorism act and a safe drinking water act. They were laying on new regulation for the defence of the public trust. With this bill you're actually cutting against the grain in North America and you're reducing environmental regulation. That actually bucks a trend. That is another reason why we should reconsider this action.

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I have three specific concerns. The first is with the purpose of the act. There is no stated purpose in this bill or in the original act that provides a measure for the public to see if the assessment is meeting its objectives. While the CEDF recognizes that the proposed act is designed to streamline the EA process, there is no clear statement of purpose against which the streamlining objective is to be applied and measured. The CEDF would therefore recommend that the purpose section of

the proposed act be amended so that decision-making at all stages of the EA will be applied against this standard and not compromise basic environmental protection.

We recommend that the purpose section state simply, "The purpose of this act is to plan undertakings so as to prevent, mitigate or remedy significant adverse environmental effects, or those reasonably expected to be significant, including cumulative effects and effects on future generations." This is the model that the former and current federal environmental assessment process follows and it sets out a nice test that the public can follow: Will the project cause significant adverse environmental effects? If so, it should not proceed. That's absent from this bill and is a significant omission.

It is significant also because the federal government wishes to harmonize the EA process with the province. We are undertaking a revision of our current EA process when six months or perhaps a year from now we'll have to do the exercise all over again to bring the two processes into conformity. I wonder why we're proceeding at this time and if it isn't premature.

Second, the discretion in this bill needs to be limited. As I've already mentioned, it provides such wide latitude for a minister or for the bureaucracy that you're inadvertently creating a regime that's unintended, and that is to vest so much power into so few hands that the public is effectively excluded.

Finally, panel membership is of grave concern to the CEDF. By allowing for bureaucrats who have perhaps worked on a project, worked on accomplishing the EA, to then sit as its judge should clearly represent a conflict of interest. Again, inadvertently, you may actually be doing environmentalists a favour. There's a case before the courts right now involving diamond mining in the Northwest Territories where a government official was put on a panel to hear the assessment of the proposed diamond mine. That's now the subject of litigation, and if it's successful, then there will be a conflict of interest declared in this case, the environmental assessment will be rendered null and void and they'll have to start the process all over again.

If you include this provision, you may well find that future environmental assessments will be declared null and void by the courts. That should be a significant concern and that's why we're recommending that this provision should be struck out immediately.

Having said that, I'll now ask Kate Kempton to address several other points and then I'll provide a short conclusion.

Ms Kate Kempton: I wasn't going to do this, but I think I will; I'd like to show you my tie. It's my symbol of business and environment working together. There are a lot of people like me, well-educated people from actually quite conservative, middle-class backgrounds who look to the EA process to represent, to actually be more than a symbol of business and environmental principles coexisting and supporting one another.

You can't, like a tie, have the EA process on paper be merely window dressing. Without effective public participation, with merely the words that proclaim public participation but without effective tools that allow for it, then that is what the EA process becomes, just window

dressing for development without adhering to sustainable environmental principles.

In particular, I would like to address the terms of reference, the scope of the hearing and intervenor funding. With regard to the terms of reference and the scope of the hearing, they really are the same arguments we have that are problematic with these two issues.

First of all, by creating what will amount to, in perception if not reality, a fait accompli by allowing the proponent to present terms of reference, even though they are submitted to the minister for approval and/or mediation, this does harm the reality of the EA process as well as the perception. Again, the perception is that of a fait accompli. It skews the process from the beginning. It establishes something that somebody has to look at and then fight against or challenge, rather than seeking a diverse amount of public input right from the beginning from a variety of sources. This basically creates an adversarial climate, and instead of people saying, "I can help create this," they're saying, "I now have to defeat or try to change this." An adversarial climate, I gather, is not what this bill intends to create.

You are at risk of making greater mistakes by targeting and skewing the input right from the beginning. Again, even though somebody can comment on it, they're focusing and targeting all their energy, all their thought processes in debate on that thing that they're looking at: the terms of reference as presented, as given. That will potentially ensure that various other options right outside those presented are not even considered. They're forgotten in the fray. In other words, if the die is cast, it's very difficult to argue for a different colour altogether.

Those essentially are the same arguments in terms of the scope of the hearing as well. By allowing the minister to set the scope of a hearing, the same arguments apply. A snowball effect is created in that the original mistakes that might have been created in the terms of reference are perpetuated in the scope of the hearing and you create a snowball effect in mistakes and in lack of credibility in the whole process.

The CEDF recommends that the terms of reference be set by wider stakeholder and public input right from the beginning, as happens with the federal process now, that the minister or the MOEE provide guidelines to the scope of the hearing only, and that there is flexibility in the board to change those hearings as arguments presented warrant.

Finally, I want to address the issue of intervenor funding. The CEDF has conducted two studies, one in 1991 on the IFPA and intervenor funding in Ontario, and is just completing one this summer on alternatives to the IFPA, which I'm sure you all are aware was sunsetted this year. We have some expertise in this area, in other words.

What this bill proposes is basically to hold out a carrot on a stick by saying, "Yes, we're allowing, in fact encouraging public participation," but effectively cutting off the arm reaching for that carrot by not providing the effective means and tools to effectively participate.

The need for funding was established by the Berger inquiry in 1974, so this is a well-known, judicially established need. For 14 years an ad hoc system was

used, and in 1988 it was determined that there were so many deficiencies with an ad hoc system that the IFPA was created, legislating a better system.

The deficiencies with an ad hoc system are essentially those with the system that is now in place since the sunset of the IFPA with the post-hearing cost awards: There's too much uncertainty with post-hearing cost awards; there's too much risk of personal financial loss of the participants; there are potentially inconsistent funding decisions made. These things lead to less and less effective public participation. That is the only logical conclusion and in reality that is what has happened.

Why this is being done — dropping the IFPA and not legislating something similar to it into this act in its place — perhaps is because it looks good to drop an expense line off the EA process budget. But every time you drop an expense, you do incur other costs, and those costs and benefits of dropping any expense or incurring any others have to be measured. The cost of removing intervenor funding and not legislating it is, as I've said, lower and less effective public participation. That leads to less credibility in the entire process and obviously the end result of that process, the decisions made and the projects that result from it.

There is more likelihood of mistakes due to less effective public participation because the input, the information that the decision-makers have to draw from is less. Thus you have a greater likelihood of harm to the environment as a result.

The concerns over intervenor funding that I will assume led to the dropping of the IFPA are no longer justified. Those concerns essentially we believe to be: the possibility for non-meritorious or frivolous interventions, lack of spending accountability on the part of the intervenors and higher EA process costs overall, like longer and more costly hearings.

The first two concerns, the non-meritorious interventions or less accountability for spending on the part of the intervenors, were addressed in the IFPA and can be addressed again in effective provisions in this bill. One only has to set stringent enough and appropriate criteria for intervenors to receive funding and to be named as an intervenor group to begin with to address those two concerns. As I said, they were addressed effectively in the IFPA.

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The third concern, higher EA costs, basically is addressed by effective public participation funded through intervenor funding from the beginning. Your bill proposes more front-end input. That is in fact what intervenor funding does provide: effective input from the beginning. It ensures that effective and diverse information that decision-makers can use will help avoid costly mistakes later, mistakes that for cleanup and fixup will be far more costly for everybody, including the proponent and the government.

Finally, intervenor funding is a very small part of a proponent's budget. The proponent is the beneficiary of the project. The proponent should therefore bear the cost. This is a small budget item. If, however, a proponent cannot afford intervenor funding, it could be paid for out of environmental enforcement fines, licence application

fees or certifications of approval. There are other alternatives that are very viable. So we recommend, finally, provisions in this bill similar to the IFPA for participant and intervenor funding.

Mr Donnelly: Thank you, Kate. One last point on funding; it's our experience that when parties are asked or even sometimes forced to engage in mediation, not to provide the costs of both the mediator and also the public-interest participants is a significant failing in that groups cannot adequately represent themselves in those forums without the funding. So I would suggest that you revise subsection 8(10) to pay the costs of not just the mediators but of the mediation itself. Otherwise the mediation cannot be conducted fairly or competently.

In conclusion, it is our recommendation that the purpose of this bill be improved; that you attempt to limit discretion; that panel membership provisions be changed; that the scope and terms of reference not be unduly narrowed; and most importantly, that funding be provided at all stages, but particularly participant funding at the beginning, to limit the time and cost of the assessment down the road.

It's our primary recommendation that you delay this bill so that it can be harmonized with the federal process and that some of the deficiencies that we and others have identified can be remedied. We think this should be done for two reasons: (1) it's in the public interest and (2) there are some deficiencies in this bill that may lead to inadvertent costs and problems in the process down the road. Thank you for your time.

Mr Stewart: Thank you, sir and ma'am, for your presentation. I want to just ask you a couple of questions on the intervenor funding. One of the reasons that I believe they had to have participator funding and intervenor funding under the present act was the fact that there was no public input, basically. Until you found out — and we'll talk landfill here — where the landfill was going to be, which was probably half to three quarters of the way through the waste management study — all of a sudden people found out it was in their backyard, and they had to fight it to get it off. In the rural community, it would be on good agricultural land. It seemed, under the present act, that was the only place, with the criteria, that you could have it.

My concern is, as you're saying that if we get the people involved early, which you want to and which I agree with, then the people know up front and all the way through what is happening during the process of siting that landfill, do you feel that by having them involved early it could solve some of the problems that we have for intervenor funding? That's one.

The other comment that was made yesterday at the hearings was the fact that we don't have any type of intervenor funding for anything to do with planning. Planning can be just as controversial and probably take as long to solve some of the problems as the environment does. My second question to you would be, where do we stop giving out money to people who want to be our opposition? Why don't we quit worrying about getting them as opposition and get them on side, as we believe much of this bill does?

Mr Donnelly: Both good questions. Funding does solve problems, both early on and near the end of the

process, because it makes participation more reasonable, effective and responsible. If you don't give people funding for hydrogeologists, engineers, planners and lawyers, then they have to resort to other tactics, which are in most cases delay. There are very few rules, then, that you can apply to the process, because they simply can't participate fairly.

With respect to participant funding in the early stages of the process, in many instances it's in the proponent's best interests to provide that funding, because then the unreasonable issues that should not be subjected to some sort of testing can then be scoped out of the process. So to spend \$10,000 early on in the process, you can save yourself hearing days at the end of the process.

But you have to understand the rationale and the scale of funding to truly appreciate why it is necessary but is not unlimited. If you're siting a nuclear power facility or Metro's waste disposal, those are billion-dollar undertakings. The limit to the funding is set by an independent decision-maker and is often fractions of 1% of the total project cost. If participant funding or intervenor funding was to be a quarter of the cost, I can see how you would object, but it's a thousandth of a per cent of the total project cost. So we're really fighting over nickels and dimes here, whereas it's absolutely essential to streamline the process.

Mr McGuinty: Thank you for a very good presentation and for lending a little bit of sobriety to some of the discussions we have here. Sometimes we lose sight; we're focused because it's the rage today to focus on costs of existing programs. But we haven't, I believe, been properly looking at the costs of not having some of those programs that have been developed over a number of decades for good reason.

Back to the subject of intervenor funding. First of all, participant funding and intervenor funding: Previous deputants gave me a definition of the two. Do you favour both?

Mr Donnelly: Yes.

Mr McGuinty: Is there anything that you would caution us regarding one that wouldn't apply to the other in terms of amounts? The purposes, ought they to be circumscribed in either case?

Mr Donnelly: My recommendation would be that if your concern — and this we don't know, because the government won't provide us with the rationale for cutting the Intervenor Funding Project Act — is limiting the exposure of the public or the public purse or of the proponent to unseemly intervenor funding awards, then you could put awards on a scale or a schedule and you could prorate it to the cost of the project. So if the project is a \$10-million project, then you may want to limit intervenor funding to \$10,000. But, again, you see what the percentage is. You could limit the costs of it but also provide fair awards based on the scale of the project.

So that would be my one recommendation: If you're worried about the cost of it, then put it on a budget, put it on a schedule, and you'll limit your exposure. How can that not be reasonable?

Mr McGuinty: Good point. I heard that in Australia they have something called an environmental public defender. Have you heard about that, and would you

recommend that to us? In other words, somebody who's on a permanent retainer. I gather they're paid by the government, by the taxpayers. They acquire expertise in the area, and they are there and available, as would counsel and a public defender in criminal law, for instance, here if we had the system.

Mr Donnelly: I'm one of those small-c conservatives. I think that public interest groups can represent themselves. In small communities, particularly remote communities that are both physically and ideologically removed from the centre, being Toronto, they often have particular wisdom that should be applied in these cases. That type of moral doesn't always lend itself well to adequate representation of diverse views. There are cultural issues, geographic issues, all sorts.

Really what we're talking about here is public funding. If it's a hydro dam or it's a landfill site, this is public money, taxpayers' money, that's being applied to solve some sort of waste management problem or some other problem. Why is it, then, that public money shouldn't also be given to groups that are representing the public interest? Give it to the local, directly affected people, and they'll represent themselves adequately.

I ask you to turn your attention to the Berger inquiry. He thought that there should be criteria that stipulate how the money should be spent and how it should be accounted for, and Berger rejected that notion. He said: "Give them the money. If they go away to Hawaii for a month-long party and then they turn up at the hearings without funding, well, tough on them; that's how they decided to spend their money." The citizens themselves are adequate advocates of their own interests, but if you're going to spend public money to compromise the environment, then you should spend a percentage of it to give the people the adequate means to represent their interests. They're representing the public interest.

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Ms Churley: Thank you for your presentations. I like your tie. Perhaps I'm being unfair and misunderstood Mr Stewart's characterization of the intent of Bill 76, and that is, "to get people on side." That's what I heard, and I submit that a major purpose of the EA is to get all of the facts on the table both from the proponent, who often has a very deep pocket, who can hire any expert, any lawyer in the world to prove his or her case, and that information the citizens have to have, and the people most affected have to get their information on the table as well. It's not about getting people on side but ending up with having the best environmentally sound project approved at the end of the day.

If there is no intervenor funding, what citizens often are up against are proponents with very deep pockets, and you can't have a fair, open process unless citizens are able to counter with their own expert witnesses in some of these particularly very technical areas that are often involved in landfill and incineration. Is that not, at the end of the day, what the EA is supposed to be doing?

Mr Donnelly: Absolutely. I regard environmental assessment as an auditing of projects: Do they make sense? Is there an environmental benefit to them? But, almost paramount, will this save money? Is it a good application of public funds? You can only get at that

through scrutiny and testing of evidence. Particularly in the cases you mentioned, where there are complex, technical issues to be resolved, you cannot expect the public to show up as volunteers and to engage the process meaningfully or effectively.

In the case of low-level flight training in Labrador, a native group, the Innu nation, was asked to critique horrendously complex and technical information prepared by noise experts and wildlife experts from all across the world. Before the federal government provided them with funding, they were required to pay their own experts primarily through the proceeds from their hunting and gathering. That happened five years ago.

What we are seeing in Ontario is a turning back of the clock to a situation where you will have people asked to front their own personal resources — their savings, by and large — to engage in these hearings. Particularly if they catch a defect with that technical information, they could save the public thousands, if not millions, of dollars. But why should the public be expected to bear that risk?

In the case of a farmer with a landfill put into the backyard, that person is being asked to bear the burden of Metro's garbage, and yet they have to mortgage their children's future, mortgage the family farm that in some cases has been in the family for generations, simply to try and root out these defects to try and give the public a benefit. It cannot be fair to ask them to front their own personal money when the proponent is being funded by the public purse.

The Chair: Mr Donnelly, your time is past. I want to thank you and Miss Kempton for being here this afternoon and sharing your views and answering the questions directly.

ONTARIO PROFESSIONAL PLANNERS INSTITUTE

The Chair: The next witness is the Ontario Professional Planners Institute, the OPPI. Welcome. Thank you very much for coming.

Mr Philip Wong: My name is Philip Wong. I'm the president of OPPI. With me are Dianne Damman, environmental planner with Ecologistics, and Chris Murray, environmental planner with the region of Hamilton-Wentworth.

The OPPI, Ontario Professional Planners Institute, represents over 2,200 practising planners in Ontario who provide professional services to the public and private sector in areas that include urban and regional community planning and design, and environmental planning and assessment. We are an affiliate of the Canadian Institute of Planners, CIP, an organization which represents approximately 3,400 professionals across Canada. Through CIP and OPPI, planners are able to speak with one voice on matters of importance to the planning profession.

We are a member-driven organization. All our funding and administration are paid for by the members, and we do not receive any funding from any interest group or parties.

OPPI is committed to working with the provincial government on matters affecting our profession and its

practice. The Environmental Assessment Act remains an important instrument to ensure that environmentally responsible decisions are made with respect to infrastructure development in Ontario. Our members appreciate that changes to the EA act are required to make decision-making more timely and add greater certainty to the EA process.

Our general comments on Bill 76:

In general, OPPI supports the fundamental direction and intent of Bill 76. We are encouraged to see that the key elements of the environmental assessment process have been maintained in subsection 6.2(2). The EA process has added significant value to infrastructure planning through consideration of the need to identify problems/opportunities; consider alternative solutions; investigate alternative methods; provide clear, traceable documentation; and involve stakeholders.

OPPI also supports in principle the proposed changes to the class EA process. Most environmental assessment projects undertaken by our members are guided by planning processes outlined in parent class EA documents. Our experience indicates that the class EA process has operated relatively efficiently and effectively and should continue to do so given the changes proposed in Bill 76.

We have, however, three issues, some concerns and recommendations regarding the level of uncertainty concerning the following: one, the integration of Planning Act and EA act processes; two, the use of a terms of reference to scope EA act requirements; and thirdly, we have other general comments. The remainder of my presentation will focus on these three aspects and hopefully provide the committee with some useful direction.

First, integration of Planning Act and EA act processes: the problem as we see it.

To understand the importance of integration, one need not look further than the challenges that currently face municipalities throughout Ontario. Lower provincial transfers of financial resources and higher transfers of day-to-day planning responsibilities are causing many municipalities to reassess what they can afford and environmentally sustain in terms of future population and employment growth and infrastructure maintenance and expansion.

As you all well know, the Planning Act provides planners the legislative framework for managing population and employment growth through such documents as official plans and zoning bylaws. Conversely, the EA act has historically been used to plan the specific infrastructure projects that are needed to service growth areas identified in official plans and other such documents. Land use and infrastructure planning follow separate processes which almost without exception have been conducted in series rather than parallel by municipalities.

In almost all cases where land use decisions precede infrastructure servicing decisions, the basic environmental consequences of servicing growth are not considered during official plan preparation. It's not until the servicing EAs are carried out that members of the public and other government agencies become more fully aware of the direct and indirect impacts infrastructure development will have on the community's natural, social, economic

and cultural environment. Experience demonstrates that it is extremely difficult to revisit land use decisions at the time of the EA, even though other land use alternatives may substantially reduce the need for such areas where infrastructure solutions are being considered. In the end, timing becomes a critical factor.

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As I mentioned previously, municipalities are under increasing pressure to accommodate population and employment growth in ways that are both affordable and environmentally sustainable. Many planning practitioners recognize that the proper response to these challenges lies in the integration of land use and infrastructure decision-making processes, the result of which is more commonly referred to as a strategic EA.

Strategic EAs integrate land use and infrastructure decision-making to the point where problems and/or opportunities at a regional, area municipal or secondary plan area can be determined and reasonable solutions or alternatives can be assessed. This allows all stakeholders an opportunity to assess the affordability and sustainability implications of various land use infrastructure strategies before selecting a preferred solution. The products of a strategic EA generally include revisions to an official plan and master infrastructure plan documents.

Because of the scale of this type of study, no attempt is or should be made to assess specific design issues normally addressed when one examines alternative methods. This level of planning is best left to a time when funds are available to carry out the specific infrastructure projects identified in the master plan documents and detailed studies can be more highly focused.

Our current EA legislation does not allow a proponent to submit for acceptance and approval an individual EA or strategic EA without proper consideration of alternative methods. The solution to this problem may well exist in Bill 76, although specific wording that will address this does not appear right at the moment.

OPPI would like to make the following five recommendations:

(1) That the Ministry of Environment and Energy, MOEE, and the Ministry of Municipal Affairs and Housing support the need for better integration.

(2) Make resources available for municipalities to become more aware of the benefits of strategic EAs.

(3) Recognize strategic planning exercises as individual EAs by including them in section 11.2.

(4) Prepare regulations and/or guidelines that define how a terms of reference could be used to carry out a strategic EA.

(5) Incorporate into parent municipal infrastructure class EA documents the need to integrate Planning Act and EA act requirements.

Our second issue concerns the proposed terms of reference.

The problem: In the past, our foremost criticism of the EA process has been the length of time taken for approvals, the lack of certainty in expectations for the EA process and content, and the lack of autonomy allowed to proponents, municipalities in particular, in guiding the planning process in a manner that is appropriate and responsible for their given mandate.

Our solution that we can see: It appears that the terms of reference may resolve some of these problems. However, in its present form there exists a great deal of uncertainty as to how the terms of reference will be used or misused in actual practice. OPPI presents five recommendations in this regard:

(1) That regulations and/or guidelines be established to clarify how the terms of reference should be developed for strategic EAs, as mentioned earlier, individual project EAs and parent class EAs.

(2) That regulations set out the extent of flexibility to be allowed in a terms of reference when interpreting sections 6.1 and 6.2 of the bill for waste management planning.

(3) That the process to establish a terms of reference be consistent with good environmental planning practice.

(4) That regulations be passed outlining when and how it is appropriate to revise a terms of reference.

(5) That the minister be given the authority to monitor the progress of an EA and allow changes to terms of reference as necessary and where supported by stakeholders.

Finally, our other general comments on Bill 76.

Non-prescriptive guidelines should be prepared outlining MOEE's expectations with regard to stakeholder involvement.

OPPI does not support sections 9.2 and 11.3, which give the minister the right to overturn or reconsider a decision of the board.

Public service employees with conflicts of interest or responsibility should not be appointed to the EA board.

There is a need to clarify how the transition to Bill 76 will apply to projects which are now under way.

Bill 76 must make reference to section 6.2 when determining the content of parent class EAs.

The revised EA process should include cumulative effects assessment.

The minister should not make a mediation report public upon referral of the application to the EA board.

Finally, ecosystem-based planning principles should be reflected in the definitions of the environment.

OPPI looks forward to working with the ministry in developing the guideline documents and regulations, as we mentioned above, that will accompany this legislation to provide greater certainty and direction.

Mr McGuinty: Thank you very much for making a presentation. Maybe I can ask you this at the outset. Let's assume that no amendments are made to this bill. What's your advice? Do we vote in favour of this or do we vote against it?

Ms Dianne Damman: I'm sorry. You said assuming there are no limits to —

Mr McGuinty: No amendments. Is this a step forward or a step backwards or is it a step sideways?

Ms Damman: In many ways you've been hearing a lot of good input from various parties who are actively involved — environmental assessment practitioners, planning practitioners — in doing the hands-on work required under the umbrella of the legislation.

I think that to approve the bill as it stands now would be not the prudent thing to do. There is room for improvement: some of the points Philip has addressed, a

number of other points included in our submission. Speaking to some of the details of the act such as the seven-day allowance for addressing deficiencies, that is not really an adequate time for a proponent to deal with deficiencies that may arise. In addition, there are issues pertaining to class environmental assessments in terms of the specifics of how these would be used by municipalities and how they would be integrated with broader strategic planning issues. Those are also concerns that should be addressed.

There are some good things that are added to the bill. The entrenchment of public consultation as a legislated requirement is certainly a positive step. Although in the past proponents should have, in theory, undertaken public consultation anyway, this ensures that will happen.

We believe there are further guidelines or regulatory additions that should accompany the bill to address some of the specific issues, such as public consultation, such as class environmental assessment, such as amendments to the terms of reference.

Mr McGuinty: I'm not sure whether that's a yes or a no.

Ms Churley: That was a careful sidestep.

Ms Damman: That was a diplomatic answer.

Mr McGuinty: Do you hold public office?

I wonder if I could put it this way. The minister, who came in to see us — she was one of the earlier witnesses; she kindly came in and spoke with us at some length — told us that the act was going to provide for early and effective public consultation, and we've heard all kinds of witnesses express concerns about the fact that the public won't be invited to help lend shape to the terms of reference, which is the very preliminary document. The minister told us that Bill 76 would increase certainty. There's reference in here at some length to the fact that this is going to lead to uncertainty. And the act of course is supposed to improve environmental protection.

You see, one of the tough things we face as members of the Legislature here is that you can only vote yea or nay. I'm just trying to pin you down. Is this an improvement? Is Bill 76 an improvement?

Mr Chris Murray: Of course it gets deferred to me. As Philip said at the very outset, in terms of the general direction it's going in, yes, it is an improvement. However, there is still a certain amount of caution that this group and other groups are trying to advise you on. To approve it as is isn't necessarily the direction you should go; there's a need for amendments. But we do encourage the government's direction. We believe it is the right direction, but there still is a need for fine-tuning.

The Chair: I think that's the best you're going to get, Mr McGuinty.

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Ms Churley: Thank you for your presentation. Were you here to present on the changes to the Planning Act?

Mr Wong: Yes, we were.

Ms Churley: I thought I recognized you. I don't always agree with every aspect of what you say, but I do want to compliment you on your thorough review and your very professional presentation. It's very clear that you analyse very carefully the material before you and you give very thoughtful, good presentations.

Having said that, I do agree with some of your points and not with others. I appreciate the positive aspects you've brought before the committee today and hope that some of your amendments will be taken into consideration.

There's no time to discuss all the areas you brought up today. One I'd like to refer to, because I have a particular interest in it and we haven't talked about it a whole lot, is class EA. There's a concern expressed by some, and certainly I have this concern, that because the proposed legislation doesn't define what can be in a class EA, there are concerns about cumulative effects, which you mentioned, by the way, in another area. And there are concerns that the way it's written now, conceivably landfill could be — I don't know if you're aware of that — brought in under class EA, plus there's no provision for public consultation around that.

Would you say there needs to be a better definition of the kinds of things that should come under class EA and that there should be some kind of public participation around those kinds of decisions?

Ms Damman: I would say yes, there needs to be a better definition of what the requirements for class environmental assessments will be. I think now is the key time to look at the existing class EA system and improve and build upon that, especially if municipalities will have greater opportunity under this legislation to use class environmental assessments as an approval mechanism.

Under the current class environmental assessment process there is provision for public consultation, and we would certainly encourage that to remain. The level of public consultation differs, depending on the schedule under which the project falls, but as in any good environmental assessment or environmental planning work, public consultation is an absolute essential.

You also mentioned cumulative effects. I guess one could look at that, within the context of class environmental assessments, as part of the overall impact assessment framework. We would encourage that. In addition, we've noted in our submission that consideration should be given to including cumulative effects assessment as a requirement under the Ontario act. As I'm sure you're familiar, under the recently approved federal act there is a requirement for cumulative effects assessment, and in fact the federal government is currently preparing or working towards the preparation of a guideline document for proponents concerning CEA or cumulative effects assessment. We would recommend that that issue be given further consideration.

Ms Churley: On another issue, on public consultation, we've had every day discussions around the fact that there is no provision for public consultation around the very important setting of the terms of reference, which is at the very front and the most important part because that's where the thing is scoped. Would you recommend to the government that the public be included in that process at the very beginning?

Ms Damman: Yes, we would echo that recommendation. I think it's important that the public be involved as early on in the process as possible. The public, those who will be directly affected by the proposed undertaking, will have valuable information to contribute. That contribution

should start at the outset of the proposal in terms of defining the terms of reference, the approach that will be taken and, perhaps most important, it can be used as a tool to help scope environment assessment. I think we're all familiar with EAs that have taken on a life of their own. If any upfront scoping can be accomplished, it is desirable.

Mr Galt: Thank you for the thoughtful presentation — well presented, well packaged. On page 2, talking about transition, we've had a few presentations express concern about the transition from the old act to this bill coming in probably early in the new year. Some have talked about time frames and others have talked about issues. Do you see this as a time frame, that it should bridge over six months, 12 months, that kind of thing, or should it be based more on the issue at hand? Or do you have any feelings on that transitional period?

Mr Murray: With respect to the transitional period, what seems to be missing in the legislation right now is some kind of grandfathering clause. A number of individual EAs are under way that are substantially nearing the end of their process. As it stands right now, it's my understanding that those projects would be required to stop and to submit a terms of reference to the government before they could proceed. I don't really see what benefit that would provide at this time. It does make sense that there be some allowance for those projects that are already under way to complete their process.

Mr Galt: So you suggest that we should look at them individually and say we'll grandfather in those 11 out there and not the others? Or would you say we should go to a time frame and if you can't get it in in six months then we're going to get on with the new program?

Mr Murray: I'm a little reluctant to support a time frame because the amount of time it takes to complete an EA depends on the EA itself. If I were to lead you in any direction, it would be more to the former, to simply address all the EAs currently under way and include them under the grandfathering clause. Other EAs that are moving along, that will become EAs, those are the ones it would make more sense to apply to the legislation.

Mr Galt: In the appeal you mention on page 1 in connection with the terms of reference, do you want to talk a little more about your thoughts on the appeal process, how you think that might plug in, how you would like to see that work?

Ms Damman: Although we haven't spoken to the particular details here, we feel it's a necessity. As proponents move through the process there can be things that change, perhaps as the result of public input, perhaps as the result of certain technical studies that have come forward, and the legislation, as it is currently framed, does not make any provision at all for any sort of appeal or revision to the terms of reference.

Mr Pettit: Thank you very much for your presentation. I might add it's always a pleasure to have someone from the hometown region of Hamilton-Wentworth participate in our deliberations.

I'm interested in your comments regarding the need for better integration of the EA and the Planning Act. One of the intents of Bill 76 is that the terms of reference can, in certain cases or where applicable, incorporate planning

done by the proponent under other legislation. Given that, would you agree, at least to a certain extent, that integration with the Planning Act is being carried out under Bill 76?

Ms Damman: Our view is that that issue has not been adequately addressed and that it is something that should be examined in more detail.

The Chair: Thank you very much for appearing before us this afternoon and having taken the time to develop the brief. It's much appreciated.

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TORONTO ENVIRONMENTAL ALLIANCE

The Chair: Our final presentation this afternoon is the Toronto Environmental Alliance, Mr Simpson and Ms Thorson. Welcome.

Ms Stephanie Thorson: My name's Stephanie Thorson. This is Greg Simpson. We're both project coordinators with the Toronto Environmental Alliance, which is a public interest group in Toronto, founded in 1988. It's an alliance of several caucuses that work on a range of issues such as pesticide use, waste reduction, climate change and transportation. The alliance has been involved in several environmental assessments in the past, such as the sewage treatment hearings and waste management plans such as the Interim Waste Authority.

As a staff member of a public interest group, the Toronto Environmental Alliance, I came here to discuss primarily the changes to public involvement in the Environmental Assessment Act. But there are more fundamental changes to the act that affect public involvement that I would like to discuss.

Even if you had provisions for extensive public involvement, which of course you don't, what the public is no longer allowed to comment on is the whole scope of the project, as has been discussed, I'm sure, in previous presentations, including the last one. Section 5.3, the cornerstone of the existing EA act, which forces the proponent to outline alternative methods of carrying out the goals and alternatives to the proposal itself, is essentially gone. By giving the minister the power to determine what has to undergo environmental assessment, you're throwing out the whole purpose of the act. The public won't even have a chance to find out what projects are proceeding behind closed doors, because notices of such projects are not mandatory, the ones that don't have to go through assessment. This is totally unacceptable, and we feel that Bill 76 is dangerous and either has to be scrapped or dramatically changed.

Under the new rules, if a proponent wanted to build a highway, for example, alternatives to the highway itself, such as light rail or car pooling, would not even have to be investigated by the proponent; it would only be an option. This is a change that is totally unacceptable and makes the Environmental Assessment Act a farce. A proponent could plan a highway, yet only be required to have available routes for a portion of the highway under discussion. The proponent's preferred option for the portion of the highway could be the only element up for debate.

This takes the teeth out of the EA act and sets the clock back decades in terms of environmental protection

legislation. The rules have been removed. In fact, there isn't even guidance for proponents on how to proceed with good planning procedures.

Without the ability to discuss the scope of the proposal, public involvement becomes meaningless. The public's role is very limited in this bill and does not allow input into the terms of reference. The public should be involved before each key decision-making point in the process, and it should be an open process, because some decisions are just too important to be left to a few people.

Furthermore, mediation is only called for after the decision has been submitted to the minister, and this is far too late in the process. The option of alternative dispute resolution should be able to be invoked at any time during the process.

As the Canadian Environmental Law Association points out, "Section 6.1 says the proponent must consult with such persons as may be interested, but does not define who are interested parties." So who determines the interested parties? It should be left open for people to select themselves, rather than giving that power to the proponent or to the minister.

I'd like to point out that the public has become a sophisticated set of groups as a result of past experiences in interventions and increased awareness of environmental issues. Taking away the ability to participate will not take away opposition to proposed projects. People won't stand for it any more. You can't just turn back the clock. They've gotten too sophisticated. In fact, by not allowing people to participate in the process, you're forcing opponents to work outside the process, either through calls to their elected representatives, through the media, or by organizing opposition groups. This will result in the further politicization of the issues, and one of the reasons the environmental act was created in the first place was to give a forum to opposition, to sort of rein it in and give it some structure and focus.

True consultation gives legitimacy to the decision-making process, and if you have a consultation process in place, people are much more realistic in the tradeoffs they make, so you're probably going to get better compromises as a result. With the current situation, you're going to have polarized factions fighting each other.

Since this closes the door on the public in any meaningful way, it results in closed-door deals between the minister and the proponent. The public will be restricted to discussing the technical issues of the proposal rather than the more important planning issues. In the highways example, rather than discussing if light rail or car pooling could replace the need for a new highway, the public would be limited to discussing the technical merits of various options. So even if this government had kept intervenor funding which would allow the public to hire experts to discuss the merits of the technical aspects, the fundamental questions of whether the highway were needed at all could not even be addressed. It would be impossible to challenge the need for a highway based on the technical aspects, which is what this legislation does.

Another alarming change this bill will bring about is the decreasing flexibility in the terms of reference. Under Bill 76, terms of reference could be approved in 1996 and yet the actual EA statement could be submitted in the

year 2020 using the same terms of reference. This situation does not reflect the fact that environmental progress is being made all the time, that techniques can quickly become outdated. For example, if a waste management plan were approved in 1982 and were still in force, recycling would not even be considered as an option, because then recycling was not considered a viable alternative in waste management by the government.

We feel a five-year time limit should be placed on terms of reference to reflect that things do change. In the case of recycling, in the past five years alone the government has realized — five years ago, they thought an approximately 20% diversion rate was possible with recycling; now they realize it's in excess of 70%. That's just an example of how quickly things change and to what extent.

Terms of reference also have to be flexible throughout the process. A proponent should have the option of modifying the terms of reference as the assessment takes place because learning takes place, or at least it should, throughout the process. And the public should have a role in that education process because, believe it or not, the experts don't know everything. As I stated, things change, and this should be reflected in the process and the ability to amend the terms of reference.

Finally, Premier Mike Harris has stated on several occasions, in opposition and as Premier, that he supports full environmental assessment, a process that seeks to find solutions to problems that are the least environmentally damaging. Surely this bill serves as an embarrassment to the Premier and he's trying to distance himself from it. This a broken promise that will not go unnoticed by the media, and if the media do not pick up on it by themselves, the Toronto Environmental Alliance will be happy to point it out to them.

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Mr Greg Simpson: I'll continue to make a few more points just to sum up our presentation. Essentially, we appreciate the intention with which this particular act is proposed, to try to clean up various parts of the act that have been problematic over the years. Nobody benefits from long-drawn-out environmental assessment processes, least of all an average homeowner who might get drawn into the process and have four years of their life consumed, involved in fighting some proposal, without getting paid or compensated for it. This is more than limiting the amount lawyers or consultants can make from this whole process.

We need to find a way to reduce the time line for environmental assessments. Unfortunately, the changes that have been put in Bill 76 allow too much ministerial flexibility to exempt different proponents from the whole Environmental Assessment Act. The idea behind the Environmental Assessment Act was to serve as a planning mechanism for environmental protection. That's what it's there for. If you don't have it there, then you've got the Environmental Protection Act to deal with the technical aspects of whether a particular proposal harms the environment. What the Environmental Assessment Act is there for is to make sure you look at alternatives.

If it were not for the fact that there is an Environmental Assessment Act, you would not have had recycl-

ing and composting programs across the province to the degree you have now. I worked for four years with the Metro works department, on the other side of the whole environmental assessment process, when it was going through environmental assessments related to landfills. Because of that process and the fact that they were forced to look at alternatives, recycling developed in Metro Toronto, composting programs developed in Metro Toronto. The money would not have been spent, those alternatives would not have been looked at.

Right now, with Bill 76, the minister can exempt the proponent from having to look at alternatives. In fact, with regard to landfills, there is a strong possibility under the terms of this act that you could exempt a landfill entirely from the Environmental Assessment Act.

In terms of why this is here, essentially you've got a decision-making process, in the same way that if you had a referendum on a decision or if you had a court case or if you had an election, you'd want a balanced process so that both sides of a particular decision can get their points of view out. Unfortunately, this act makes no reference to the fact that intervenor funding was discontinued with fast decisions, and I believe that's an essential part of this process.

It's very difficult for opposition or for individuals who are concerned about a proponent to participate meaningfully in a process where you've got very expensive lawyers and very expensive consultants being paid for by a proponent opposing you. The people getting involved in this are your average, middle-class homeowner with a family. They're concerned about their family's health and they're concerned about their property values. It's generally not professional environmentalists who are running around doing these things. It's generally somebody who didn't have an interest in this until it was decided to put some particular proposal right next door to his home.

Essentially, if you set up the process that Bill 76 is going to institute where you have a lot of uncertainty, where the rules can be changed at any time according to the ministry, where there is no public involvement in the terms of reference right at the beginning, you're setting in place a process that is stacked towards the proponent, and when there are complaints from constituents, they'll be going to the local MPPs, and those folks are basically going to be saying, "Wait a minute; democracy isn't working for me."

Thank you for your attention.

Ms Churley: Thank you for your presentation. You have spoken to many of the same issues a lot of community and environmental groups have referred to, problems with various aspects of the bill.

I'm going to quote something. My colleague Mr McGuinty asked the Premier in the House one day, "Do you still today believe that Ontario dumps ought to be the subject of full and public hearings under the Environmental Assessment Act?" and Mr Harris said: "Yes, I do, in spite of the fact that we felt the previous government was proceeding in error with its megadump proposal. At least they were having full environmental assessment, not trying to short-circuit the process, not going without any full environmental assessment." That's one of the times,

and there are others, when the Premier of Ontario, Mr Harris, has guaranteed full environmental assessments for landfills and other, related waste management facilities. Would you say, given the possibility of negotiating key elements of EA off the table during the discussion of the terms of reference, that this promise would be kept?

Mr Simpson: It doesn't appear to be. Depending on what actually happens when the minister is negotiating things away with the proponent, there is not full participation from the public in deciding the terms of reference. We and many other submissions have said that this is crucial if the public is not involved, and to the degree that for later parts of the act Bill 76 actually says that it's up to the minister and the proponent's decision as to who is an interested party in this whole process, no, I don't believe that promise is being kept. Unfortunately, you could question whether he is keeping the promises to the 905 anti-dump groups or other possible opposition to future dumps, basically saying that a dump is a serious proposition and you need to have that process.

Ms Churley: So you would recommend that for the Premier to keep his promise, this committee needs to put forth an amendment that — I don't have the sections in front of me now — during the process of negotiations around the terms of reference the heart of the EA be kept; that is, looking at the alternatives to the undertaking, the alternatives to the site, the definition of environment. Those are key elements, the heart of the EA, which now, under this new proposed legislation, might not be looked at during the EA. So you recommend that to keep that promise the government has to amend that section.

Mr Simpson: To keep the act meaningful, yes, they do.

Ms Thorson: I'd like to add something too. While subsection 6.2(2) does maintain the force that the proponent must investigate alternatives, subsection 6.2(3) says, "The approved terms of reference may provide that the environmental assessment consist of information other than that required by subsection (2)." You'd have to remove subsection 6.2(3); that has to go. The cornerstone of the EA act was section 5.3, which is now subsection 6.2(2), and that should stay, definitely.

Mr Galt: Thanks very much for the presentation, your thoughts and ideas. You made reference to four years being a long time working towards a landfill site and some of the frustrations of homeowners. I can give you time frames that are much longer than that. We heard from the mayor of Cochrane yesterday. They were up to 13 years and still going. I forget how many hundreds of thousands of dollars they've spent and still they're not winning. Meanwhile lives of people have been disturbed during that period of time.

It's just nobody's winning. Obviously the system is broken and we want to try and fix it. An awful lot of what we're fixing is about recommendations that came through from the advisory committee that was working on this over the last quite a while.

You made reference to the alternatives, looking at all alternatives. I have a little difficulty when we already have in regulations something like the 3Rs program, the composting. Do you think we need to go back and reinvent that wheel over again with some of the alterna-

tives? That's some of the thinking in trying to get away from spending horrendous quantities of time on re-inventing that wheel. I'm interested in your comments.

Mr Simpson: Essentially what happens in the various environmental assessments — actually Metro is just involved in one right now potentially, if the Kirkland Lake process continues. They have basically looked at various alternatives. Every time you're talking about a waste management plan, it's different for every jurisdiction. What works in Metro Toronto may not work in Sarnia and vice versa. Nobody wants to reinvent the wheel, and what happens is you end up having information that's brought in from all jurisdictions. It's basically reused information. The consultant who's working in Metro Toronto is using information from Ottawa and all these other things, so it's not necessary to start from scratch each time. There's a body of knowledge that keeps building.

What the requirement actually does allow you to do is that if there are any new developments in the time frame, you are constantly searching to make sure you're on the cutting edge of technology, of what's happening. As well, if there is something particular to that jurisdiction that is possible as an alternative that may not have been possible somewhere else, you have to pay attention to that. You can put limits around that, but I think the essential idea of actually having to look at alternatives has to be there somehow.

1520

Mr Galt: I'd like to explore intervenor funding with you for a second. I'm sitting here really struggling, whether you call it intervenor funding, participative funding, assisting. We end up, as was just being related to me, with four landfill sites in one county. The proponent has four consultants, four hydrogeologists. The other side has four hydrogeologists, four other groups of consultants and lawyers and so on. It just strikes me, what we're after is to find out, is this environmentally sound or not? Why get two sides fighting if at the very beginning, when these terms of reference are being developed, we could come up with an agreement by the public and the proponent as to who that hydrogeologist would be or who the other consultants or lawyers or whatever would be? There would be a neutral party. Would we still need participative funding if we could come up with that kind of a neutral body?

Mr Simpson: I think you need participant funding throughout the process, but if you, for example, had proper representation right at the beginning during the terms of reference process — right now the public is not involved; it's just the proponent and the minister — if the public was involved and represented adequately there, that would certainly serve to shorten the whole process so you don't, as you say, have all these disputes: "Well, I don't trust this hydrogeologist. I'll bring mine in and you'll have to pay for my consultant." Yes, the more things you can get out of the way and get agreement on right at the beginning, that serves to shorten the whole process. As we say, it doesn't serve anybody to have something last 13 years and it just ends up that the proponent spends lots of money. If you actually have intervenor funding to make sure it's a fair funding, you have lots of tax dollars going for this as well.

Mr Galt: That was the old process problem. Maybe it's mediation up front and getting an agreement as to who these specialists will be.

Mr Simpson: Plus, the intervenor funding never covered the full costs of opposition to any proponents. You had many members of the general public putting in many hours of their own time on a volunteer basis and basically throwing their lives off to the side while they participated in this process.

Mr McGuinty: Thanks for your presentation. It's driven home for us some of the key messages we've heard the last few days. I wanted you to speculate a little bit — you're going to be the last group we're going to hear from here in Toronto — to look into the future, drawing on some clues from the past in terms of the record this government has vis-à-vis the environment. If Bill 76 goes ahead, particularly as it contains extensive discretionary powers for the minister to ensure that there's no longer a full environmental assessment as it's classically been defined until now, what's the landscape going to look like? What's it going to mean?

Ms Thorson: It could look like a proponent proposes a project and it is totally at the discretion of the minister whether that project is even subject to an environmental assessment process, whether it has to go through the submission of a statement, go through a hearing, be subject to assessment, which is not a way to proceed. You could get the power concentrated even further in this province so that proposals can be rammed down the throats of people who legitimately have concerns and perhaps even have better alternatives, but those better alternatives were never allowed to see the light of day because no one asked for their opinions.

There could be a lot of deal-making between the proponent and the minister, and the public in this case won't even find out which proposals are not subject to environmental assessment because the projects that are not required — the public is not notified through the Environmental Bill of Rights or any other notification, they just happen. If they happen on their back door they'll catch wind of them, but that's the only way and then it will be too late.

Mr McGuinty: One of the stated objectives of Bill 76 is to bring about greater certainty. Now, based on what you've told me, is this going to lend greater certainty to different proponents from different parts of the province putting forward different proposals?

Mr Simpson: When you have as much ministerial discretion as is outlined in this act, there is not the certainty that you would really like to see. As well, I would add to Stephanie's comment that basically it's just going to shift the battlefield — or whatever you want to call it — from the environmental assessment process to the courts. Opposition to a particular proposal is not going to go away. It will find some way, be it the media or be it the courts. One of the good things in the environmental assessment process is that it actually keeps it fairly reasonable. You try to actually have some mediation going on, you have proper representation to see if you can come to agreement. You're going to have an adversarial situation no matter what. These things still could drag out only they'll drag out through the courts.

The Chair: Thank you kindly for joining us this afternoon and sharing your views with us and the preparation that you had. We appreciate it.

That was our final witness for today. I see a hand waving in the wind from Ms Churley.

Ms Churley: I just wanted to make sure that in the anxiety to get out of here for today you saw me. I'm sure you're all very sad to hear this, but I'm unable to join the committee in Thunder Bay tomorrow. Marion Boyd will be replacing me and I've briefed her well. Our party will be well served tomorrow. But because this is my last day on the committee before clause-by-clause, I do want to make a motion. I've already checked that it is in order.

I move that Ms Elliott, the Minister of Environment and Energy, who is ultimately responsible for Bill 76 and who is giving herself unprecedented powers while gutting the EA act, be requested to attend the committee for all clause-by-clause deliberations.

Mr Chair, I'm asking for this because it's very clear that as the committee progressed, the committee heard some concerns over and over and over again about the problems with this bill that the minister has not had the benefit of hearing repeatedly as the committee has. There are a few members who I see here today who have been consistently with the committee from day one. I think we've all got a clearer picture of some of the major problems with this act. I fear that when the parliamentary assistant goes back to the minister and the powers that be, whoever, in the Premier's office who want this bill to go through as is, it will fall on deaf ears. I should withdraw that. My friend Gary Malkowski would not have approved of that "falling on deaf ears." I apologize for that.

I think you get my gist that I'm afraid that, unfortunately, the committee members, should they agree with some of our amendments, the government will not agree overall, and I think it's essential that the minister be here to hear the arguments as to why some of these amendments we're putting forward need to be made to keep the integrity of this act to protect the environment.

The Chair: Ms Churley has put forward a motion to the committee. Is there debate?

Mr John Gerretsen (Kingston and The Islands): Surely it's a reasonable request, Mr Chair.

The Chair: Is there discussion? Is there comment?

Mr McGuinty: Sure. I'd be glad to speak in favour of that motion, Mr Speaker —

Ms Churley: Don't call him "Mr Speaker" today.

Mr McGuinty: There may be an opening there. It's an eminently reasonable request. I know that traditionally the minister appears before a committee at the outset and limits his or her time here in order to limit his or her exposure to the slings and arrows of questions launched by opposition committee members. But there's a number of concerns that are raised in Bill 76, and some of those — we may be able to obtain some reassurance from the minister in terms of why it is that she's seeking to have these powers, broad-based powers. It may very well be that she will conclude that she doesn't need them. If that's the case, then of course we can remove them from the bill itself.

But we can't get that kind of reassurance and we can't have that kind of a discussion without the minister herself

being here. So I lend my wholehearted support to my colleague's motion.

Mr Galt: Just a short comment. I was listening to the motion but I lost track of where the motion ended and the speech started. Maybe we could have it re-read.

Clerk of the Committee (Ms Lynn Mellor): Ms Churley moved that Mrs Elliott, the Minister of Environment, be requested to attend at this committee for all clause-by-clause deliberations.

Mr Galt: Thank you. We've heard the motion and we're not in support of that motion.

The Chair: If there's no further discussion, I can call the question.

Ms Churley: I'd like to make a brief comment. As I, and others, pointed out repeatedly during these hearings, the Premier of this province made a promise to the people of Ontario that garbage dump hearings would be subject to full environmental hearings. Perhaps there's a lack of understanding about what's going on here, but I think the minister needs to hear the serious ramifications of being party to breaking the Premier's promise if she's not aware of the implications if some of these amendments are not put through.

She can always turn it down, I suppose, but I don't understand why you can't support the motion to request her presence. It's up to her to say yes or no. So if you'll reconsider supporting a motion to request the presence of the minister, then it's up to her to decline or come.

Mr Gerretsen: I'm sure it will be supported now.

Mr Stewart: If I may ask, is this precedent being set for all of the clause-by-clause we have had on various bills through this term and indeed the previous terms? I doubt it very much.

I take a little bit of exception to the fact that I, being part of these hearings for two weeks, do not have the ability to have listened well to these people and to either make amendments or suggestions. I think probably we in this room, including yourselves, have gained a great deal of knowledge from the hearings and I think we can stand in good stead and create an act that will be environmentally sound in this province without having the minister at clause-by-clause for two days. So I won't be supporting the motion.

The Chair: Any other comments?

Mr Galt: Put the motion.

The Chair: All right. All those in favour of the motion? All those opposed? The motion is defeated.

Any other business?

Mr McGuinty: Someone made some reference at some point to the fact that the ministry is considering giving some consideration now to how it would compensate people who find their property located in the vicinity of a landfill site. I wonder if Dr Galt could make some inquiries to find out what's going on, if anything, in that regard so that we might be advised here at the committee. Is there a discussion paper that's been produced?

Mr Galt: There is a proposal for landfill site standards that was put out roughly on June 15, looking for comment. I think the comment period originally was to July 15 and extended to September 6. In that there is the compensation —

Mr McGuinty: So there's nothing separate from that relating to compensation that is been the subject of some consideration.

Mr Galt: Do you have a copy of that?

Mr McGuinty: Oh, yes, I've got that.

Mr Galt: It's in there.

Mr McGuinty: That's it?

Ms Churley: Just to follow up on that, I believe the agricultural group alluded to a task force being set up to look at the issue of compensation. What we want to know is: Is there a task force? If there is, who's on it? And is it in operation at this time?

Mr Galt: There is going to be. We'll get you details for tomorrow.

Mr Stewart: They'll have to come to Thunder Bay with us, Ms Churley.

The Chair: Likewise, I want to say thank you to all of you, because I found this to be a very civil committee in terms of its discussions and debate. I have a long-standing commitment in my riding tomorrow, so I will not be able to join you, but I've learned a great deal and I know we all have. So I want to thank you all for your cooperation.

The meeting reconvenes tomorrow in Thunder Bay at 11 am.

Mr Galt: If I may, Mr Chair, thank you for doing an excellent job as Chair of this committee. You've been handling yourself extremely well, and handling the committee.

The committee adjourned at 1535.

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**In attendance / présents*

Substitutions present / Membres remplaçants présents:

Mr Doug Galt (Northumberland PC) for Mrs Johns
Mr Dalton McGuinty (Ottawa South / -Sud) for Mr Kennedy
Mr R. Gary Stewart (Peterborough PC) for Mr Newman
Mr Morley Kells (Etobicoke-Lakeshore PC) for Mr Preston
Mr Ed Doyle (Wentworth East / -Est) for Mr Smith
Mrs Marilyn Churley (Riverdale ND) for Mr Wildman

Clerk / Greffière: Ms Lynn Mellor

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Thursday 15 August 1996

**Journal
des débats
(Hansard)**

Jeudi 15 août 1996

**Standing committee on
social development**

**Comité permanent des
affaires sociales**

**Environmental Assessment
and Consultation
Improvement Act, 1996**

**Loi de 1996 améliorant le processus
d'évaluation environnementale
et de consultation publique**



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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
SOCIAL DEVELOPMENTCOMITÉ PERMANENT DES
AFFAIRES SOCIALES

Thursday 15 August 1996

Jeudi 15 août 1996

The committee met at 1100 in the Valhalla Inn, Thunder Bay.

ENVIRONMENTAL ASSESSMENT
AND CONSULTATION
IMPROVEMENT ACT, 1996LOI DE 1996 AMÉLIORANT LE PROCESSUS
D'ÉVALUATION ENVIRONNEMENTALE
ET DE CONSULTATION PUBLIQUE

Consideration of Bill 76, An Act to improve environmental protection, increase accountability and enshrine public consultation in the Environmental Assessment Act / Projet de loi 76, Loi visant à améliorer la protection de l'environnement, à accroître l'obligation de rendre des comptes et à intégrer la consultation publique à la Loi sur les évaluations environnementales.

The Acting Chair (Mr R. Gary Stewart): Ladies and gentlemen, I would like to welcome certainly those in the gallery and those who will be presenting today, as well as all the members. I will welcome them, Mr Gravelle, to Thunder Bay on your behalf.

Mr Michael Gravelle (Port Arthur): As I welcome you, Mr Chair.

The Acting Chair: Thank you. To those who are going to present, I would like you to know the protocol. You have 30 minutes to make your presentation. It can be all presentation, or part of it a question-and-answer period, but you have 30 minutes to do it and the questions will be done on a rotation basis and will be divided equally between the three parties.

THUNDER BAY REMEDIAL ACTION PLAN
PUBLIC ADVISORY COMMITTEE

The Acting Chair: The first delegation is the Thunder Bay public advisory committee, and I believe Mr Hartley is the chair. Welcome, Mr Hartley.

Mr Bob Hartley: First of all, welcome to Thunder Bay at the head of the Great Lakes. I looked forward to your committee coming here because I have some very positive things to say to you this morning. My name is Bob Hartley. I chair the Thunder Bay Area of Concern Remedial Action Plan Public Advisory Committee — the PAC.

I would like to first of all outline the public membership in the public advisory committee. There are 22 members who represent a variety of interest groups which really mirror a cross-section of the public of this very fine city. On the public advisory committee are representatives of most major industries, municipalities, academics, professionals, various organizations such as

sports fishing and environmental groups, and the general public. We meet monthly, are strictly volunteers, and are interested in achieving a cleanup of environmental concerns and pollution prevention.

We are part of a very important process, the RAP process. We understand the need for a stepwise, ratchet approach rather than instant gratification by hatchet success, and as a team of RAP professionals develop a consensus for each issue. We understand the need for compromise rather than divisive rhetoric.

Our interest in Bill 76 is proactive and positive. At this time I also wish to congratulate the government for offering to develop an EA process by Bill 76 which will speed up the decision-making under EA legislation. The changes will allow for a decision on the EA application, within a realistic time, either to proceed or not to proceed. The long time length of the present process seems to benefit neither the environment, the public or the proponent. Perhaps only the legal system materially benefits from the present process.

We see the positive changes in Bill 76. They should accomplish a guaranteed access to the EA process by the public, and I'll elaborate on this shortly; a clear understanding of what the EA terms of reference will include, and it's extremely important at the outset that everybody be on stream on this; a time frame for the process that will allow for quick decisions at each step of the process; harmonization with Environment Canada's EA process to produce one product; mediation, extremely important to speed the process along at key steps; a less costly, quicker result; and a decision that does not become mired in bureaucratic paper shuffling where millions of dollars pour into the sands of the legal system.

I've outlined positive views on Bill 76. I'd also like to make a couple of recommendations to be considered regarding Bill 76.

The first one involves public involvement. It's very difficult to get a handle on who the public really is: Is it an interest group, a variety of interest groups, or those people out there who never comment upon anything? But it's very important for the government to get a handle on who the public is and bring them on stream. Our public advisory committee is public. We certainly try to bring all issues to the overall public by keeping the work we do transparent and responsible.

In order to truly involve the public, the ministry should look at a process to bring interested parties from the public on board early. That isn't just posting something in a registry. You want to bring on a team of people, a team that will develop consensus, not adversarial divisiveness. The public can be the greatest strength in any ministerial process if you're brought on at the beginning,

if you're brought on in a consensual method, and if you're brought on in a transparent process.

In the present legislation, it seems the public is brought on adversarially partway through the process, and this is really unfortunate. That is, I think, an opportunity for Bill 76 to rectify because of bringing the public in in the terms of reference, but you want to encourage the public to come in. This encouragement will bring a strength to the EA decision that's far beyond today's process. If you look at some of the adversarial decisions that have occurred recently, there are no winners. There's always somebody who feels really miffed. But if you bring the EA process into an openness, you will provide a strength that is unknown, really, in this province.

Encouraged participation in this process provides true strength in decision-making. The RAP process in certain successful areas of concerns such as Hamilton harbour, Bay of Quinte, Collingwood, Nipigon and here in Thunder Bay, to list a few, certainly brings the public into a process to successfully complete tasks.

An example here in Thunder Bay is a decision that brought out of bureaucratic litigation for years the Northern Wood Preservers' contaminated sediments. It was adversarial, in the courts for more than a decade. The public advisory committee initiated a dialogue with the company against the advice of lawyers on both sides, government as well as the company; they wanted to continue the adversarial route. I was at a meeting yesterday in regard to this and it looks like probably within the next few months the process will begin to remediate one of the most toxic hot spots in Lake Superior.

You have to remove it from the court system. As a result, public participation will develop a trust with the environmental process and adversarial conflicts are solved long before multimillion-dollar derailments occur. There are many examples of multimillion-dollar derailments here in Ontario. A good example is the \$140-million-plus derailment in one of the southern environmental hearings.

Another positive point in this process is professional mediation being allowed in the process. This will allow mediation to perhaps — and I like the word “mediation” because again it implies consensus. When there's a vote, there's always somebody, unless everybody votes positive for it, who feels they have lost. If you bring it into consensus, you will find that everyone is a winner. Even if somebody or a group finds that they are not in agreement with the consensus, if you have them actually put down their disagreement as a dissenting opinion, when you put the two side by side, consensus and dissenting opinion, you find out there's very little difference between the two. Suddenly you have a point to move ahead and the divisiveness is not there.

1110

Bill 76 allows public servants to serve on the board, hopefully in order so the actions of the board seem in the public interest and seem transparent, and are transparent. The board majority should not be that of public servants. It is fine to have professional public servants serve on the EA assessment board, but certainly I think the public would look askance at having a majority.

My presentation is short. In conclusion, we all understand that wastes are generated by a vibrant economy,

and good recycling programs can reduce waste discharge. However, with a new EA process that involves the public, truly involves the public, and is transparent in its actions, wastes should be controlled with no environmental degradation.

Good effort on changing a cumbersome act. Congratulations. Pollution prevention is the key, not costly remediation.

I will be more than pleased to answer any questions.

Mr Gravelle: Thank you very much, Mr Hartley, for your presentation. There's probably agreement among all three parties that in terms of the process we'd like to have the process in some way changed. There's been too much time taken for various projects perhaps, but at the same time I think we all would agree that the important thing is that the environment is protected. So I think finding that balance has been and probably will continue to be the true dilemma.

One of the problems that's certainly been identified with this particular bill, which you make some reference to in terms of the public consultation, is the fact that the bill itself says it's “An act to improve environmental protection, increase accountability and enshrine public consultation in the Environmental Assessment Act,” and all the material that's come from the minister has certainly indicated that is the priority, but when you look at the details of the bill, it's not there. Quite frankly, in terms of the public consultation process, there's very little guarantee of public consultation. In fact, there's much less public consultation. Certainly there is none there in the terms of reference portion of it. You made reference to the environmental registry not being enough.

Certainly one of the concerns that those of us in opposition have is that in order to maintain the integrity of the environmental process, you truly do need public consultation. The act, on the surface, says that's what they're going to do, but when you look at the details there's some concern.

I guess my first question is that obviously you feel the public consultation process is important. Should the public be involved at every level they possibly can be, and how can they be involved? Obviously, when you look at the bill you can see that there really isn't that opportunity, except probably at one level potentially.

Mr Hartley: Absolutely. That's why I focused my comments on public participation. The public should be involved right from the very outset in the terms of reference. You've got to draw the public — and I use the word “public”; it's a tough word to really define. But where there are organized groups that do mirror society, use them. Ask for their input.

Volunteer organizations, first of all, are volunteers. There are virtually no paid staff. So you want to bring them on board, encourage them.

Unfortunately, many times, not so much governments because government-elected representatives are servants of the people, in the bureaucratic process of things they sometimes fear public participation, that it may upset the apple cart or it may cause some adversarial publicity. But done correctly, brought on stream where you feel you're really part of the process and it doesn't fall into the legalistic hands of the solicitors, then you're going to

have a strength. I agree with you, it should be perhaps necessarily part of the bill, but part of the process that follows the bill. You've got to bring the public on stream, very much so. I totally agree with you and that's why I'm speaking.

Mr Gravelle: Our feeling is that it does need to be made very clear in the bill, because I think in the rush to speed the process — and I know the government members who have been listening to two weeks of testimony have frequently heard this and I'm sure they're sensitive to the fact that consultation at all levels is very much what needs to be there, and it needs to be there to maintain the integrity of the process.

But you came close to another issue which I think probably needs to be addressed here. A lot of the groups that are involved are volunteer groups. In many cases you may be allowed into a public consultation process, but unless you can find some funds to do it, it's difficult to do. Intervenor funding is no more; the funding is gone. I'd like to know how you feel about intervenor funding. The fact is that it does seem to me that unless there is some part of the process that guarantees intervenor funding, you can't truly have public consultation, because to be able to hire the experts or do the sort of things you need to do, you can't do it potentially at bingos and at some of the charities. So I'd like to know your position on intervenor funding and whether you think that should be part of the process.

Mr Hartley: First of all, the Remedial Action Plan Public Advisory Committee, which is part of a government process, our particular funding has almost been cut 90%, and I apologize for only giving one Xerox copy of my presentation, but funds are really that short.

As we look at ourselves as part of the government team, we're there to remedy a problem area. Intervenor funding, funding to do things like this, even to say positive things about what is happening, is drying up very quickly. Our costs to the government are minimal. If you look at what we've done here in Thunder Bay over the last six years, they're positive.

Mr Gravelle: So you think that intervenor funding obviously is something that should be considered.

Mr Hartley: Yes.

Mr Gravelle: I think probably it's important to —

The Acting Chair: I'm going to have to cut you off.

Mr Gravelle: Really? No special dispensation?

The Acting Chair: No, not because you're up here. Mrs Boyd.

Mrs Marion Boyd (London Centre): Just to continue, these are highly technical issues very often and one of the real issues about true partnership with the public in trying to engage the public in this as a partnership issue is that it's going to be an extraordinarily unequal partnership — isn't it? — without intervenor funding.

Mr Hartley: Very much so, and that is why I spoke very much on the public part. I'm speaking personally on this now. I don't believe that intervenor funding should be provided to a group to hire a solicitor to do the presentation. I totally disagree with that.

Mrs Boyd: But the technical things.

Mr Hartley: Otherwise I'd have had a lawyer sitting here today, not me, and it would have cost us thousands

of dollars. It cost the government nothing for me to be here. That's why I think intervenor funding should be provided to facilitate organizations such as ours and others, not to hire other professionals, because within a group that does in fact mirror society, you've got people who can lend their expertise to make responses and input. I would probably disagree with having intervenor funding to hire a bank of lawyers to do what I feel the public should be able to do, come and speak to a group, but I do need, and the public advisory committee and other groups like us in Ontario do need, support at the facilitation level. It has dried up extremely quickly, extremely fast, and many of the good things that we have done are going to disappear too.

1120

Mrs Boyd: There were two items you mentioned that I'd like to pursue. One was the issue of your concern around not just the lawyers taking over but the bureaucrats taking over, and this committee has heard this before.

There was a very good presentation by Robert Gibson, from the department of environment and resource studies at the University of Waterloo. He goes through the sections of the act where there is discretionary ability within the act, for example, section 6.2(3), which allows discretion around the actual elements of the EA itself, but there are many others, including the ability of the minister to delegate his or her responsibility to ministry officials and talks about this as basically a strengthening of the ability of the bureaucrats to make the decisions and really cutting both the elected and responsible officials as well as the public out of the process. What's your comment on that?

Mr Hartley: First of all, I believe that the ultimate responsibility is that of the government of Ontario to make a decision. However, if the process has been followed where it is transparent, the public has had true input, they've been helped with their input on funding, funds for professional mediation have been allocated and all parties feel that public input has been there, then the bureaucrats perhaps would feel more comfortable in the results.

I deal constantly with bureaucrats in my capacity at all levels, and I feel very comfortable dealing with local Thunder Bay civil servants, because we have developed I think a sense of trust and responsibility, and I'm not there nor is the public advisory committee there for the 30-second adversarial clip where we hang somebody out. That's not our style. We're there to get a job done. We understand the word "process." Many people don't understand truly the word "process." It's a variety of steps, and if you work in that process, you develop a trust team approach, then the bureaucratic control is not necessarily there.

Mrs Boyd: I don't disagree with you at all. I just think that this act in fact brings the public in so late and in such an ephemeral way that your vision is not possible. I would share your vision, and I would agree with you that in that kind of circumstance it could be a true partnership, and I agree with you there are very fine people who work within the government and work on that process. I guess my concern is that the way this is

set up and the so-called flexibility in the act in fact is geared to allow whatever results are wanted in the first place to happen, and that's a real problem.

On the harmonization issue, I think most of us are agreed that it would be nice to have one process that would meet all needs, but in fact we've seen in the NAFTA agreement and many other agreements that harmonization means dropping to the lowest common denominator rather than the highest common denominator. Would you agree that's a concern for you in this whole situation?

Mr Hartley: Not here in Thunder Bay. The remedial action process is a team between Environment Canada and the MOEE and the other Ontario ministries.

At present, our EA process, and one of the projects I mentioned in the program is northern woods, that's been essentially teamwork between the local MOEE staff and Environment Canada, so I can't really say that I have seen here in Thunder Bay that particular problem which you address. I'm sure it happens.

But, again, I would hope what you're going to end up with, and I envision this — the bills sometimes don't do what we all envision, but then this is a process and perhaps no bill is ever the best that's ever come to us, but what I envision is that both the environmental process of Ontario and that of Environment Canada again develops this team approach where they come to an agreement, because some of the rules for Environment Canada differ from some of the rules here in Ontario for MOEE.

Mrs Boyd: Not to mention the US or Manitoba.

Mr Hartley: Yes.

Mr Trevor Pettit (Hamilton Mountain): Thank you, Mr Hartley, for your presentation. I'm interested in your comments relative to early public consultation and the intervenor funding. It seems to me that the previous act encouraged public participation at a later stage in the process, whereas this one here will encourage early public participation. Would you agree that by getting the public involved at an earlier stage not only will we reduce, perhaps, at least the total amount of intervenor funding but it will also encourage a little bit more cooperation among the groups and also, in so doing, eliminate a lot of the 11th-hour delays and late entry opponents in the process?

Mr Hartley: Absolutely. The earlier you have the public on board and the earlier they feel that the public is part of the process and believe that the process is transparent and the public is involved in the terms of reference, the less chance for divisive rhetoric.

Mr Doug Galt (Northumberland): Mr Hartley, thank you for a very eloquent and thoughtful presentation. I was intrigued with some of your comments as they relate to the public. Certainly as addressed by you and the other two parties and us, the system is broken, and what this is about is trying to fix it, get it so it works in a reasonable time frame down the road. We're out here for the hearings because we don't pretend that it's perfect. We're looking for the fine-tuning, and that's what the hearings are all about.

I'm interested in your comments about the public. When we were in North Bay on Tuesday, one of the presenters was very vehemently opposed to busloads coming up from southern Ontario to tell people in North

Bay what they should or should not be doing environmentally. I'm wondering if you get them up here. At the same time I'll ask you, what should "the public" be? Should they be the public of the community of Thunder Bay when we're dealing with something like this, the public of the region or the public of Ontario, Canada or maybe an international public? Environmentally, with some things, we all pay if we make a mess. How do you see the public, and do you like to see busloads coming up from southern Ontario to help you?

Mr Hartley: No, I don't like to see busloads coming up here to help us, because I think we have a very competent society here in Thunder Bay to deal with Thunder Bay issues. I also should mention that I am part of the Lake Superior Binational Forum, an IJC group that is a very unique group that looks after the environmental process of the entire Lake Superior. This is an international group. So as a result we get an even more diverse dichotomy of opinions. But eventually you work as a team and you develop consensus on that.

I believe that in any area if the public representation really truly mirrors the community, then you're getting an opinion of the community; the busload of single-viewed individuals does not mirror that of the community, does not mirror that of the unseen public who never writes letters to the editor and never appears before groups like this.

You end up getting that alienation between industry and the environment. Truly, in all my time dealing with environmental issues — and I've been dealing with them since 1974; I chaired the Lakehead Region Conservation Authority here for a decade — I have never met an industrialist who wanted to pollute our environment, never. They feel difficult with some of the constraints. I think what has happened over the last decade in Thunder Bay and in Lake Superior is that we have improved our environment here immensely.

But we need the government's support in intervenor funding. We need some facilitation support to provide what I think the government would like to see in public consultation. If you do not provide some small amounts of support, you will have busloads coming in here. Because you no longer have persons such as a public advisory committee sitting here to discuss sanely a topic that affects us all, you will have a busload from here, a busload from there. Why? Because you have no local support for public representation. That's the difficulty the government must face and that's unfortunate today. In the cutting of funding, people who have contributed positively also get cut as well, so the government loses a phenomenal resource base which has taken a decade to produce.

The Acting Chair: Thank you, Mr Hartley, for your presentation. It's been a pleasure.

1130

SIoux LOOKOUT

The Acting Chair: The next delegation is from the town of Sioux Lookout, Mr Ian Marshall, waste management planner. Welcome, sir.

Mr Ian Marshall: First of all I'd like to thank you for the opportunity to address the standing committee on social development concerning Bill 76. I have a brief presentation which I'll make and I prefer to leave a large amount of time at the conclusion for discussion and any questions from this committee.

I bring three years of intensive public consultation field experience to this forum, having worked as the project manager for the Sioux Lookout area waste management plan, and I've also been a member of the Bastille Group of Municipal Solid Waste Management Study Co-ordinators of Ontario during that same period. Many of my comments today are shared by my colleagues in the Bastille Group.

Ontario has set the pace for environmental planning. Past initiatives must be applauded, as must many of the initiatives contained in proposed Bill 76. In general, I have been pleased to see that the initiatives to revise the EA process under Bill 76 will be beneficial to both the public and proponents alike. There are many strengths in this proposed legislation which will serve to expedite the process, minimize any additional costs and provide assurances that compliance will produce the desired results. There are what I feel to be some inadequacies or potential pitfalls which I suggest should be corrected prior to the approval of Bill 76.

I've identified seven main areas within the proposed legislation to which I will direct my comments. Likewise, I have included 12 recommendations which I will propose to this committee and discuss on conclusion of my comments. The comments are in the areas as follows: the need for early and clear public consultation; the implementation of strict time lines; terms of reference requirements; the ministerial review of EA submissions; the role of the EA board; the potential impact on EA projects that are currently under way; and finally, a general comment on the methodology which has been used for the development of Bill 76.

Public consultation: The need for early and clear public consultation has been, and continues to be, an essential component of EA planning to ensure the protection of all parties involved. However, public participation is essential for this to occur. The public has resisted, and will likely continue to resist, participation in processes which they don't fully understand or to which they can't envision an objective outcome.

The consequences of Bill 76 appear to be that if the public fails to comment at the appropriate time, that opportunity for comment will have been lost. Although I recognize the need to protect the proponent, since I'm currently working on an EA for my employer, the town of Sioux Lookout, I also recognize this lack of public participation as an inherent weakness in the success of proposed Bill 76, since it doesn't adequately address the needs of the public. Failure on the part of the public to "know the laws of the land" or "speak now or forever hold your peace" will only result in continued confrontation between the proponent and the public, and therefore potential opposition to any proposal. This will mean that resolution will continue to be effected through mediation or, ultimately, adjudication.

I feel that a public education component will be essential to advise the public of its role and obligations in EA planning and should be delivered by the regulatory body. It should not be the responsibility of the proponent to deliver this message since it will not be believed. I've had experience in that respect. Public comments during our planning process — the public has said: "It's just a government law. We don't like it, so you go out and get it changed for us." There is a mistrust and a non-belief if the proponent delivers the message on behalf of the regulatory body and the legislative body of the province.

As a recommendation, I suggest that a guidance manual for public participation in EA planning should be prepared by the Ministry of Environment and Energy and be made available to the public upon request. It should also be made available for proponents, for their distribution at the outset of the EA planning process, so they can hand the message of the province of Ontario to the public rather than including it in their own documents.

Time lines: The need for strict time lines has been requested for a long time by both proponents and the public. The adherence to strict time lines has been strengthened in Bill 76 to provide some of those boundaries to the planning and approval process.

Strict time lines will only assist the planning process if those time lines are extended to all review agencies as well. The most commonly cited cause for planning delays is the lack of timely response by review agencies as well as lengthy delays during approval. Without amendment, a proponent will be placed in a position of non-compliance with Bill 76, possibly through that lack of action by a review agency.

The concept that the director may extend deadlines if a compelling reason exists weakens Bill 76 substantially as it has the impact of not having time lines at all and therefore no amendment to the current process. From the EA planning perspective, however, EA planning is iterative by nature and must be able to accommodate amendments proposed by the public and/or other government agencies. The potential for such amendments must remain a possibility and proponents must be able to react without jeopardy to their approved time lines.

As a recommendation, I propose that Bill 76 should be amended to provide the inclusion of adherence to strict time lines by all participants in the EA process, including proponents, public, review agencies and the approvals body. Proposed legislation should be amended to include provision for the consideration of the impact of amendments on planning time lines. Guidance documents for proponents should also include consideration of potential amendments upon request or upon demonstrated need into the proposed EA planning process time lines.

The terms of reference: A review of Bill 76 indicates that the terms of reference will be binding on the proponent but it does not appear that they will be binding on the minister or the EA board. This will not achieve the desired objective since it does not provide the intended assurance to proponents that compliance with the terms of reference should result in approval.

1140

As I mentioned previously, and I'll apply it to the terms of reference as well, EA planning is iterative by

nature and must be able to accommodate ongoing amendments throughout the development of the EA process. Such a planning amendment, however, if undertaken but not anticipated at the outset of the process by a proponent, may cause significant alterations to the terms of reference. The proponent must have the freedom to react to that input or that input is meaningless.

In reality, amendments to the terms of reference will become the norm rather than the exception, since it is unrealistic to expect that all eventualities will be considered during the preparation of the terms of reference. A mechanism must be entrenched in the legislation which allows for amendment to the terms of reference as required.

As a recommendation, I propose that Bill 76 must be binding on all EA participants to the same degree in order to provide the intended assurance to parties of the integrity of the planning process and approvals process. Bill 76 should be amended to include provision for amendment to the terms of reference by the minister upon the request of the proponent, and such amendment must be made available for public comment.

Ministerial review and remedy of EA submission deficiencies and mediation: The provision for the remedy of deficiencies of an EA submission should be expected of the proponent. However, the time of seven days proposed to enact that remedy is substantially inadequate. This is significant since a proponent could face the rejection of their EA submission for non-compliance.

Mediation is a very worthwhile tool in the development of the EA; however, mediation must be entered into willingly by all parties concerned to be effective. Enforced mediation will not provide successful resolution. The provision for publication of the results of mediation in the event of failure to resolve the issues during mediation would prejudice both the mediation while it's going on and, subsequently, the hearing processes which would follow. Mediation discussions, if publication was allowed, would then depart from the frank and open discussions which could occur and would assume the guarded tone of a hearing, since ultimately any of those discussions would become public knowledge or evidence to be used in the event of a hearing.

As a recommendation, I propose that Bill 76 should be amended to allow the proponent to remedy deficiencies within 30 days as opposed to seven as proposed. Rejection of the EA should be considered by the minister only if deficiencies have not been completed after that 30-day period. The mediator's report should not be made public and should not be allowed to be used as evidence during a hearing. The mediator's report should be used for mediation, and mediation only.

The role of the EA board: Bill 76 provides the EA board with the opportunity to hear evidence on subjects in addition to those to which it has been directed by the minister. This latitude is an inherent weakness in our current approval process and should not be perpetuated in amendments to the EA approval process. The power granted to the EA board under proposed Bill 76 would actually supersede that of the minister, since scoping of hearings and adherence to the terms of reference would not be binding on the EA board. Proponents would not

have any greater level of assurance that their compliance would be recognized than currently exists. The Minister of Environment and Energy must maintain absolute authority over the EA planning process to ensure the protection of the public, agencies, proponents and province of Ontario.

The provision to allow the minister to reconsider a decision of the board should be removed. If the minister wishes to rule on an EA submission, then it should be done prior to referral to the board. Reconsideration of board rulings will only cause delays, uncertainty and cost to the approvals process, which are collectively among the reasons for revising this legislation.

As a recommendation, I propose that the EA board should be bound to considering evidence and issues as determined only by the minister. The decision of the EA board should be binding.

Potential impact on EA projects in progress: According to the advice I have received, proponents who have substantially completed planning under EA legislation may have to amend current processes to comply with some aspects of Bill 76 if their submission is not anticipated until after promulgation of this legislation. This appears to place an undue burden on proponents who have complied with current legislation. There may however be proponents who feel it is in their best interests to bridge to the Bill 76 requirements.

As a recommendation, I propose that proponents who have substantially completed EA planning and will submit within three months of promulgation of Bill 76 should be allowed exemption from compliance to this legislation at their discretion — the grandfathering concept.

In closing, I will comment on the process used for the development and consultation of this proposed legislation.

Pre-submission consultation is an inherent component of both the current EA act and proposed legislation. The Bastille Group, comprised of members of Municipal Solid Waste Management Study Co-ordinators of Ontario, individuals who have been involved in the development of municipal waste management plans under the current EA act, was not consulted during the drafting of this proposed legislation. Collectively, the Bastille Group represents many years of combined experience working within the EA framework and public consultation and could have provided a valuable resource during the drafting of this legislation. These are the individuals who have direct contact with the residents of Ontario involved in EA act consultation. Further, Bastille Group members have had considerable difficulty obtaining copies of the draft legislation and were not even advised of the existence of this standing committee nor the deadline for presenting comments until that deadline had passed.

As a result of this process selected, you are now being asked to consider some of those suggestions as amendments to the bill rather than incorporating the comments into the original proposed legislation. Consideration of such a group's comments during the development of the legislation would have saved yourselves and ourselves considerable time and effort.

It is somewhat ironic that the pre-submission consultation concept I have outlined is consistent with the current

EA act planning requirements and has further been entrenched in Bill 76; however, this same process wasn't followed by the proponents of this legislation. I suggest that pre-submission consultation be used more effectively during the development of subsequent legislation.

I thank you for your consideration of this submission during your deliberations. I emphasize that I believe the recommendations I have made to you are somewhat minor in nature to the legislation, minor amendments. However, I believe the impact of including those recommendations will be quite substantial in improving the quality of our EA planning in Ontario.

Mrs Boyd: Thank you very much, Mr Marshall. I thoroughly enjoyed your presentation. It was very clear and very mindful of the kinds of issues a committee like this needs to consider, so that's very good.

I also am struck by the fact that although you're speaking primarily from the position of a proponent, your presentation reflects exactly what our previous presenter said: that people who are concerned about this and are prepared to work in good faith represent many of the same views. Although you represent it from a proponent's point of view, many of these recommendations would be agreed to as necessary by the general public and by environmentalists, and I think it is important.

I'm particularly struck by your final comments, because I agree with you — and it's been true on other pieces of legislation like Bill 26 and so on — that previous consultation, with the expertise that's been developed among both professionals and the public in the province, would save a lot of controversy around these kinds of acts.

When you talk about the discretionary elements within the bill — particularly you're talking about the ability of the board to hear evidence in addition to what's in the terms of reference — that's a concern for everybody, because it really is a two-edged sword, isn't it?

1150

Mr Marshall: Yes, it certainly is, because if you've basically complied with what you said you have complied with, then why should delving into that in greater depth be a subject for the board's consideration?

Mrs Boyd: So you believe that a better process in setting the terms of reference, pre-consultation at that stage, would prevent a lot of controversy and adversarial nature afterwards, but you need to stick to those terms of reference and follow through from that, allowing for amendment?

Mr Marshall: Yes.

Mrs Boyd: You talk about the need, as you go along, that if additional information comes, the minister ought to be able to amend the terms of reference. It shouldn't just be at the whim of the board.

Mr Marshall: That's right, and that's where I think if that recommendation was included in the legislation, it would tie up some of those loose ends and it would basically put everybody on a level playing field. Amendment must be considered and is required; however, it shouldn't be done arbitrarily and there should be a defined process as to how that amendment to the terms of reference can be accomplished.

Mrs Boyd: So you believe that both the proponents and the public are better served with a much more definitive process that allows for consultation and amendment in a way that's built right into that process?

Mr Marshall: Yes, and thirdly the province of Ontario, because all parties then understand clearly where they stand in the process.

Mrs Boyd: The other issue you raise is this issue of time lines. I think everybody is very empathetic with the government's desire to move this process along, but your argument around the seven days to amend, needing 30 days to amend, is quite persuasive. I think many proponents would argue the same thing, that they want strict time lines, they don't want these things to drag on the way they have, but a seven-day amendment process simply doesn't meet the technical and scientific needs that you might face.

Mr Marshall: One of the reasons for making that recommendation is that although seven may work if there's ongoing consultation during the submission of the EA act, it's unknown at this point whether that submission consultation will continue with some of the downsizing that's gone on within the EA branch of the Ministry of Environment and Energy. Not knowing whether that ongoing consultation will be possible in the future is the reason I propose 30 days, because if that consultation does not continue, seven days is unrealistic.

Mr Ed Doyle (Wentworth East): Thank you, Mr Marshall, for your presentation. I believe you were here during Mr Hartley's presentation earlier; I think I saw you here.

Mr Marshall: Yes.

Mr Doyle: A question I have for you is similar to the one that Mr Trevor Pettit had asked of Mr Hartley, and that is, if the public is involved in the terms of reference stage very early in the process, do you believe this will keep the costs down as it may relate to intervenor funding or overall, and do you believe that perhaps it will keep hearings from occurring in a prolonged process?

Mr Marshall: I believe it will go a long way towards preventing the lengthy processes we've had in the past, but I do have a substantial concern. The public isn't voluntarily going to come forward because they're legislated to do so. There's going to have to be some incentive and encouragement and public education to get them to come forward. If the public is willing to come forward at the earliest stages in the process and buy into the process, which is another hurdle, then I do believe it will substantially reduce the need for intervenor funding, which has basically been used as a confrontational type position. It's been used to solve differences that hadn't been solved at the outset.

Mr Doyle: You had mentioned your concerns about mediation. I'm wondering if you could expand on that somewhat as far as keeping the process of mediation behind closed doors. What about the results of the mediation when the process is complete?

Mr Marshall: I believe there is no reason not to make the results public information. However, I would be concerned if all the details of all the discussions that went on during mediation were actually made public and used as evidence during a subsequent hearing, because you

know and I know that if you and I were in the hallway talking about this, we'd both let our guard down and talk a little more openly and frankly about this, but if every word we were saying was being recorded and could ultimately be used as testimony, we'd be very careful about what we said.

Mr Doyle: Thank you, sir. I appreciate it.

Mr Gravelle: Good morning, Mr Marshall. Thank you very much for appearing.

There are a couple of things that probably need to be said. One, this is the last day for public hearings on this bill, Thunder Bay, so there has been a stretch of time and there have been some consistent themes. I'm encouraged, certainly, to see the government members asking the questions in terms of the further public consultation, because there is a recognition that one of the flaws in the bill is that the actual public consultation isn't there; it needs to be reinforced in terms of legislation. You obviously saw that when you were going through it and you obviously feel public consultation is crucial to it working.

You also made the point just now that the public is not likely to get involved voluntarily, or not able necessarily to get involved, but you had concerns about intervenor funding for what its previous purposes — how it was used or how it was perceived. So it's maybe important to follow up on the possibility or the thoughts you have. If you were to define how the funding could be used, if it was used as supportive funding, would you be supportive of some form of funding being available to participants and people who need to — in other words, in order for the public to be involved, there may need to be some form of help. It's sort of a catch-22, it seems to me. If you don't have some kind of help, they won't be able to participate, yet we all agree participation by the public is crucial, and hopefully again the government will put some amendments forward that will improve that in the bill.

Would you support a form of funding that could be defined in a clear way that would obviously help the public get involved and would not lead to what your concerns were?

Mr Marshall: Yes, I would, very much so. I would like to see the funding used at the front end of the process, however, for education and involvement of the public early in the process. I feel it's counterproductive to provide that funding at the conclusion of the process and basically to bang heads. A much more productive use would be to use it to involve the public at the earliest stages.

Mr Gravelle: It's certainly encouraging to hear you say that in terms of your position as well, so I think that has some impact in terms of what the government members may be able to do. It's becoming more and more clear as we near the end of the hearings that the public consultation is absolutely crucial and the process actually could ultimately fail, all the good intentions that may be here could fail, unless the public is involved in a manner that does maintain the integrity of the process. I look forward to some positive amendments from the government side.

The Acting Chair: Thank you very much indeed, Mr Marshall, for your presentation.

We will be breaking for lunch and resuming again at 1:30, but prior to that, Mr Galt, you had a comment you wished to make.

Mr Galt: It has to do with the tabling on Friday of the amendments and some difficulty with legislative counsel. They will be tabled by 5 o'clock, if that's in keeping with the opposition? Good. Thank you very much.

The Acting Chair: We will break and meet back here at 1:30.

The committee recessed from 1159 to 1331.

WINDIGO INTERIM PLANNING BOARD

The Acting Chair: Ladies and gentlemen, I call this hearing to order. Our first presenter this afternoon is the Windigo Interim Planning Board, Margaret Wanlin. Welcome on behalf of the members of the panel.

Ms Margaret Wanlin: Thank you. I've put a map on the table over here. Maybe you could pass that around as I'm talking to give you a sense of the geography I'm mainly focusing on.

My presentation today is called "Creating Partners, Not Adversaries." Let me begin by introducing you to the Windigo Interim Planning Board and how its existence relates to the Environmental Assessment Act.

You may be familiar with the gold mine that's currently under construction in the area north of Pickle Lake, near North Caribou Lake First Nation. It's called the Musselwhite mine. Musselwhite was the name of two brothers who did the initial exploration there in the 1960s. It's a joint venture between Placer Dome and TVX Corp. By the early 1990s it was starting to look at if there really could be a mine there. There are a number of first nations in the area, and some of them had been involved in mining agreements with Placer Dome's Dona Lake Mine and what is now Barrick Gold's Golden Patricia Mine. These were agreements that involved sharing opportunities for economic benefit with first nations and creating a commitment to ensure that all environmental standards are met. In exchange for creating that agreement, exemptions were given from the Environmental Assessment Act.

The Musselwhite mine has followed that same pattern. The signatories to that agreement, along with Ontario, Canada and the mining companies, are Windigo First Nations council and two of its member first nations, North Caribou Lake and Cat Lake; also the Shibogama First Nations council and two of its members, Wunnummin Lake and Kingfisher Lake.

This is now the third agreement with many of the same parties. Each of those agreements has shown the maturing of the parties and the increasing expectations on the part of the first nations both for protection of the natural environment and stimulation of their own local economies. For example, Musselwhite is currently in the construction phase, and as of late July there were 49 people from North Caribou Lake First Nation employed at the mine site. That's out of a community of 700 people, so you can see that it's a significant fact. Of the member communities, North Caribou has the largest number of people employed and has also benefited from getting some contracts to work on the mine project,

including building the all-weather road last summer and clearing a section of the right of way for the power line last winter.

I describe these things to you to show the benefits of exempting properties from environmental assessment in favour of benefits agreements. The Windigo Interim Planning Board and another similar one for the Shibogama communities were set up in September 1993. The board was one of the elements of the Musselwhite agreement and it was given this mandate:

"The board shall advise the ministers (natural resources, northern development and mines, environment and energy and native affairs) by:

"(a) developing a plan for land use and resource development in the planning area;

"(b) reviewing and commenting on applications and 'matters in land use related legislation' as the board may direct;

"(c) identifying potential opportunities for resource-based economic development and the practice of traditional economic activities;

"(d) developing community participation models suitable for use in remote northern Ontario."

The board is made up of six people, three from the Windigo communities and three representing Ontario, and I'm the independent chair. All of these are order-in-council appointments.

My title, the theme of the presentation, is to stress the importance of using benefits agreements to create partnerships instead of environmental assessment, which can tend to create adversaries. I believe it's particularly true in the remote north that opportunities for significant economic development are few and far between, so it's important that each one be captured. The proponents and first nations will be sharing the land; much better that they do so in an atmosphere of partnership where there is benefit to all the parties.

Now down to the specifics of Bill 76. First the good news: It's a positive step to establish terms of reference. We support the idea of getting it clear at the outset: What is this EA going to be all about? It can be an important step in providing the focus for preparation by the proponent and the intervenors. However, there does not seem to be a requirement to consult with the other parties in the process of developing these terms of reference. This could result in a serious gap in the terms and therefore a flawed EA. I just want to stress the importance of involving all parties in establishing the terms of reference.

We support the idea of the use of mediation; we think that's an excellent point. Bringing mediation and other problem-solving techniques in at any point is a good thing, because the whole point of the exercise should be finding solutions. Any true efforts at problem-solving and finding solutions are an important step. Mediation can be cheaper than some more legally oriented approaches and can result in solutions that get beyond the positions and deal with the interests of the parties. It goes back to our theme, "Creating Partners, Not Adversaries," because the search there is for the win-win solution.

Third, we think it's efficient that a hearing can be held on just the areas of disagreement. Sticking to those

subjects makes a lot of sense. There's no need to replot the ground where there is already agreement.

It makes good sense to require consultation as in section 6.1. It's clear that the best way to solutions is to involve the parties at the earliest instance. More details are required here to include the description of the range of parties to consult and to clearly define what consultation means. Sending a notice in the mail, for example, does not constitute consultation, which brings us back to the point of the need for consultation regarding the terms of reference. Getting that stuff right at the beginning is really important.

Now the bad news: How will the parties, other than the proponent, be able to afford to participate in these processes? It's expensive, it's time consuming, it's costly; when you look at the map I've provided, you can see that travel just on its own is at a horrendous cost. Many of the interested parties are not in a position to afford to participate. Most first nations don't have the kinds of budgets that would allow them to do the research and studying that are necessary to participate effectively.

There's a need to limit the types of projects or undertakings that are subject to class EA. Your definition of the term "class" gives a great deal of latitude for grouping undertakings. We would prefer a definition of "class" that involves undertakings which are small and have repetitive and predictable impacts environmentally as well as culturally and socially. From my preamble you can see that the Musselwhite agreement is resulting in economic benefit to the member communities. It's not a perfect system and there are some growing pains going on as we speak, but none the less it's very worthwhile for first nations to work with proponents in a way that provides economic benefit and protects cultural values. This opportunity could be erased if a class of undertakings were to be established for, for example, small gold mines north of 51 degrees and more than 25 miles from a community of fewer than 1,000 people.

In short, an inappropriate definition of a class of undertakings could get in the way of native rights and native economic development. A good rule of thumb would be that class environmental assessments are not appropriate north of the area of the undertaking as established for the class environmental assessment on timber management.

There's a need to involve parties beyond the proponent in the development of the terms of reference. I mentioned that earlier and I say that again because I think it's an important weakness in the act as it is now.

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There needs to be more guidance on who is to be consulted. A wise proponent will take care to identify all the interested parties and be in communication with them. All proponents may not be that careful and thorough. First nations traditional lands extend some distance beyond reserve boundaries, and proponents will need to take this into account when identifying native groups which have an interest in the undertaking.

Two other issues I'd like to address. One is exemptions from environmental assessment; the other is federal versus provincial responsibility.

First, provision for exemptions. Benefits agreements, as described here, are important to first nations and to their goals of self-determination, self-sufficiency and self-government. It's important that the EA act in no way limit the ability of parties to come to an agreement outside the act. As well as being more efficient, these agreements have potential, more than has been reached so far, to stimulate the economies of small northern communities.

Where does federal responsibility begin and provincial responsibility end? As described, the Musselwhite agreement is a product of significant and serious consultation on a number of fronts: environmental, social, cultural and economic. Because an agreement was reached, the project was exempted from a provincial environmental assessment. However, the new federal Canadian Environmental Assessment Act came into effect. Huge volumes were generated at significant expense to the proponent. Placer Dome estimates that they spent \$200,000 on external consultants. With additional costs for their staff time and government costs, the exercise was probably costing half a million dollars — I was going to say "worth" half a million dollars, but I don't think it was. The time lines for response were ridiculously short. I believe it was 60 days for the six volumes of 200 pages.

The utility of that exercise was not apparent to the Windigo Interim Planning Board, to the member first nations or to the proponent. This was an example of government bureaucracy at its worst: duplication, no significant benefit and a tremendous amount of wasted expense. The money used to create this report could have been used in much better ways.

Where does the responsibility lie? Can Ontario and Canada get together on this and delineate who does what? This form of duplication is unhelpful. Harmonization or some form of interlocking process is necessary.

According to the proponent, there was only one change made as a result of the federal EA: to recommend covering the landfill site with clay instead of sand.

To create two environmental assessment processes, one from which the project was exempted and one from which it was not exempted, diminishes the multilateral process in which Canada, Ontario, the first nations, the tribal councils and the proponents were all diligent participants.

My conclusions: Protection of the environment from an environmental, social, economic and cultural perspective is important. Environmental assessment is an effective way of ensuring that protection, and alternatives to EA such as benefits agreements will be increasingly important in the future and, along with appropriate provincial standards and rules, can assist in the socioeconomic development of northern communities while ensuring that environmental concerns are paramount.

Mr Doyle: You have a very interesting presentation. I thank you for coming today and presenting your ideas to us. There are some good ones.

A lot of people who have commented to us in the hearings so far have made similar reference to the fact that it's important that the public be involved right at the beginning of the process, at the terms of reference stage. You obviously agree with that proposal, the idea that it

perhaps be amended. You mentioned as well concerns about intervenor funding. Is it your view that if people are involved in the terms of reference stage and in helping the development of the terms of reference right from the beginning, it would help reduce costs and time in the entire process? Do you think this would be of assistance in reducing the costs?

Ms Wanlin: Absolutely. I think it would become clear where the contentious areas are and could be set out in the terms, and some areas which may not turn out to be as contentious as previously thought could be eliminated. The example that I go back to, one that was important here in northern Ontario in the last few years, was the class environmental assessment on timber management. They spent, from what I understand, months, weeks, maybe even years trying to decide whether they were really talking about timber management or forest management. If that discussion had been held outside of that very expensive and large process, it would have made a lot more sense.

Mr Doyle: I assume this would also cut down on the time element?

Ms Wanlin: I think so. I've done a lot of work with multi-stakeholder groups — the Ministry of Natural Resources does quite a lot of them — and the first thing they do is set out a terms of reference, and then people have an opportunity to sort of wrestle with those terms of reference. It's a necessary step that groups go through. It's just part of what they have to do, figure what we're here for, what this is about. If you don't do that in the formulation of the terms of reference — in effect you do it anyway, because that's what you spend the first part of the hearing doing. So doing that as a deliberate part of establishing the terms I think would be effective.

Mr Doyle: I wonder if you could give us your idea on members of the public who could be involved and what the process should be in ensuring that everybody is properly informed. What would your views be on that? There seems to be some contention as to who the public is.

Ms Wanlin: That's a hard one. Obviously, that's going to be different in different geographic locations. In the area that I'm talking about, the major stakeholders are the first nations, so it's easier there to delineate who that is. It would be the first nations whose traditional land is involved plus the tribal council and probably the Nishnawbe-Aski nation as well, and then the industries that have an interest there. In much of that area there isn't any forestry going on, so mining would be the biggest potential other user, and tourism.

In more populated areas, I think you'd want to have the various sectors of the economy represented, whether it's mining, forestry, hydro development, whatever, as well as some of the more socially oriented concerns. So whether it's environmental groups or coalitions of people with social concerns, it's going to depend on what the thing is about.

Mr Doyle: Because, and perhaps you have experience in this as well, there have been questions raised at the hearings about people coming in from far afield to insert their views. I wonder if you could comment on that.

Ms Wanlin: It's a real problem in northern Ontario. If you take, just to use an example, a small town like

Hearst, it's a lumbering town. That's what they do there. They don't have a large environmental community. It just doesn't exist. Anybody who dared to be an environmentalist in Hearst would be at risk. That doesn't mean the environment is not important and that voice shouldn't be heard, but it becomes difficult to figure out how do you reflect a broader, maybe a provincial perspective in that local situation. I don't think it's good enough to just draw a circle around it geographically; I think you really do have to have the range of perspectives present as well as the geographic.

Mr Doyle: Fine. Thank you very much.

Mr Gravelle: Good afternoon, Margaret. It's nice to see you. Thank you very much for your presentation. I think the story of the Windigo Interim Planning Board is a pretty incredible story all of its own in terms of what can be achieved by working together in this cooperative way. I think any opportunity you have to tell people about it is useful, and it's very effective I think talking to this particular committee about it.

I certainly appreciate also some of the other points you're making and I'm encouraged. Today being the last day of our public hearings, as I noted this morning, I think we're getting close to the stage where there will be some amendments going forward. Some of the common points that are consistently being brought forward are to do with public consultation and the whole issue of intervenor funding, and I appreciate Mr Doyle's comments, and a recognition that there need to be some adjustments to this legislation because I think one of the problems, as it stands now, is that they talk about consultation but the bill itself is set up so that actually consultation will not be what it appears.

I wanted to ask you just a little bit more about the concept of intervenor funding. The concern that I have, and I think many have, is that public consultation is crucial to the process, needs to be done up front, and potentially can be a better way of doing it by doing it up front, and we need to be able to involve the appropriate groups. But again without intervenor funding, a lot of them can't take part. So it becomes a situation where it looks like there's consultation but there may not be able to be, yet there's been criticism of the intervenor funding.

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Have you got any thoughts in terms of how the intervenor funding process to supporters or to participants, how it could be structured so that some of the criticism which has — I presume you're probably familiar with some of the criticism of the funding — how it could be structured so that it could work?

Ms Wanlin: I can't give you a really detailed answer to that, but I would suggest, building on the point from over here, that it should be in two parts, that intervenor funding for developing the terms of reference would be different from intervenor funding to actually have the hearings, for some of the same reasons I just gave.

What you might find once the terms of reference were developed is that some of the parties won't be as interested as they may have previously thought they were, so therefore they don't need money later on. I also think it takes a different kind of a person, someone who's a more strategic thinker probably, to develop the terms of

reference, whereas when you get into the EA, that's when you've got to fight it out for your side. So supporting people to do the terms of reference should be a separate process and looking for different kinds of people. I don't know how best to do it other than to have some sort of pool of money that groups could apply for, and I guess some ranges would need to be set depending on the nature of the environmental assessment, how large it is.

Mr Gravelle: I think part of the criticism in the past — and whether it's fair or not I won't comment on — is that it's become just a place where consultants and lawyers make lots of money and don't necessarily get the message across. We heard actually somebody make a presentation a couple of days ago who made the point that they hired the lawyers to make a case for them but the lawyers weren't doing that. They no longer felt as if they had hired the person. It was suddenly the lawyer taking over the situation, and again no criticism meant of the profession, because I'm sure they were doing their best, but it got out of control. Somebody else made the case that you need basically people who are more scientific, that it's more of a scientific process, explaining hydrogeology and all this sort of stuff. So I think there's a need for it and there's a sensitivity I think developing that there is a need for this kind of assistance.

Ms Wanlin: I think mediation comes in here too, because if you have good quality mediation, it's a whole different process than the legal one, and it should shorten the time of the hearings and make the whole thing cheaper. Mediators — I should say that I am one, as I make this point — are cheaper than lawyers and they have a vested interest in solutions whereas lawyers tend to have a vested interest in winning on behalf of their client.

Mrs Boyd: This is a very interesting presentation and from a perspective that a lot of people haven't recognized, the kind of ground-breaking efforts that have been made to reach solutions around economic issues with first nations and various other economic enterprises.

Throughout where you talk about it, you talk about proponents and native communities, and of course all of our hope is the day will come when native communities themselves are proponents. One of the issues that arises around what governance is like in native communities is whether, if native communities were the proponents in one of these circumstances, the time frames in fact would be prejudicial to their governmental proposals. For example, the seven-day period for amendment to a proposal is a very short time period when you have a communal decision-making process and another level very often that needs to be consulted. I'm wondering if you think there needs to be built in there some mechanism to ensure that at those stages the kind of governance structure that exists in a native community, which is substantially different from a commercial enterprise, could be accommodated.

Ms Wanlin: I think that is a very good idea. You point out quite correctly that it doesn't run the same. Certainly the process of arriving at these benefits agreements has sometimes taken longer than people would have originally thought and hoped they would. But they've seen the benefit, so they've put in the effort. Yes, I think that is important.

One of the things that we do is review development proposals. Some of them come from the first nations themselves and some of them come from other proponents. The coordinator of our board has been quite strong in his opinion that we must use the exact same kind of rigour on first nations proposals that we would on others. I think there is a growing awareness there that, yes, we want to do it ourselves, but yes, we need to recognize that we've got to do this in an environmental context that's sustainable. But I think in order to make that work, the processes may need some form of amendment.

Mrs Boyd: Yes, because the whole notion of what property is is different and ownership of property is communal ownership of property rather than individual ownership of property. So when you talk about the use of that property there needs to be a much higher level of community consent than we would see in the white view of property as being private property, which simply is not part of the process.

Ms Wanlin: The nature of the impact is much greater, too. We were, for example, considering a proposal from another mining company and they were looking at a base metals mine quite close to North Caribou First Nation. To make a base metals mine work, you have to make a road. As soon as you put in an all-weather road to a community, you change everything. Everybody's aware of the struggle that these communities are going through with alcohol and drugs. These communities are attempting to be dry communities and not have people bring in liquor, but as soon as you have a road it's just impossible to do that. Many elements of the fabric of the community are affected by these developments.

Mrs Boyd: And there really would be an opportunity, I assume, if people had participation in the setting of the terms of reference perhaps to take that into account, but without that element there it's very hard, the bill as it sits now, to make sure that assessments would be able to take that kind of thing into account, because normally they wouldn't be taken into account. That's why that becomes such a crucial element.

The Acting Chair: Thank you, Ms Wanlin, for your presentation. We appreciate your appearing before the hearing.

FRIENDS OF THE FOREST

The Acting Chair: Our next delegation is Friends of the Forest, Deneen Brigham, if you would come forward, please. Also, for the folks in the audience, the clerk has put copies of the various presentations on the table back where the water is. If anybody wishes to have a copy of them, please help yourself.

Ms Deneen Brigham: Good afternoon. My name's Deneen Brigham and this is Lucie Lavoie and we're representing the interests of Friends of the Forest today. I'll just start with some background into who Friends of the Forest is and where our interests lie.

Friends of the Forest is a not-for-profit organization whose purpose is to unite people concerned with the loss of forests around the world. We strive to preserve and restore forests without sacrificing the integrity of forest users. The board consists of 10 persons who meet

monthly to volunteer their time and efforts working on various issues as they arise. As a non-profit, non-government organization, there is no monetary gain for any of the individuals who are involved with Friends of the Forest. Individuals are affiliated with the organization simply because they are concerned about protecting the integrity of the natural environment.

Friends of the Forest is concerned with any amendments to the EA act which may result in a weakening of the process and negative impacts to forest resources and the environment as a whole. Friends of the Forest support the views and recommendations submitted by the Canadian Environmental Law Association with respect to Bill 76, the Environmental Assessment and Consultation Improvement Act, 1996. In our presentation today, however, we will focus on four main areas of concern with Bill 76. These areas of concern relate to the development of the terms of reference, effective public consultation and funding requirements, project exemptions, extensions of the act to private sector undertakings and application of the process to class assessments.

While we agree it is important to streamline the environmental assessment process, it is critical that adoption of a more efficient process does not compromise the intent of the original EA act. Since the terms of reference are the foundation for any future decisions regarding a project proposal, it is critical that they are as comprehensive as possible.

1400

This cannot be accomplished without requiring the proponent to consult with the public during the development of the initial project plan. If the terms of reference are deficient in any way and later approved, then the remainder of the process is defunct. Without public consultation, there is the potential for significant environmental impact to be disregarded.

In the long run, public consultation during this stage could actually be beneficial to all parties concerned. Contentious issues will be identified early on and could eliminate the need for mediation or a public hearing in the future. If no contentious issues arise, at least public interest groups would be able to build their case more effectively.

Therefore, Friends of the Forest recommends that section 6.2 be amended to include a provision which would require a proponent to notify any public interest groups that terms of reference for a particular project are being developed. Furthermore, public consultation during this stage of the process should be made a condition of approval of the terms of reference.

Friends of the Forest echoes the views expressed by the Canadian Environmental Law Association with respect to public consultation in the EA process. While it is an improvement to make public consultation mandatory throughout the process, there remain a few glitches which may hinder effective public participation.

Section 6.1 describes public consultation as an "obligation to consult," stating, "When preparing an environmental assessment, the proponent shall consult about the undertaking with such persons as may be interested." We are of the opinion that the terms "consult" and "such persons as may be interested" are ambiguous and open to

interpretation by a proponent. There are many forms of public participation, which range in commitment from simply notifying the public to the development of longer-term relationships and joint planning and decision-making.

When public interest groups are asked to participate on committees, we accept in good faith. Public interest groups expect all parties around the table to participate openly. We are dependent upon the knowledge and expertise of those individuals who represent either the government agency or the corporate body.

A good example commonly used in northern Ontario are local citizens committees for timber management plans. Past experience has demonstrated that government and corporate interests accustomed to making decisions behind closed doors sometimes find it difficult to openly share information regarding the activities of their proposed project. The result for most representatives is frustration, and participants generally consider the process a waste of time and energy.

Secondly, how does a proponent decide who is deemed interested in their project? Some important interest groups or stakeholders may be selected against in the event that a proponent decides that a group has no direct interest in a development proposal. For this reason, we recommend that a clear definition of "consultation" and "stakeholder" be included under section 1 so that the intent of public consultation in environmental assessment is not ambiguous and left to the discretion of the proponent.

Another limitation to effective public participation is the lack of funding available to public interest groups to investigate and present arguments during either the mediation or the hearing stages of the process. Section 8 refers to the proponent paying the reasonable expenses of mediators. These moneys should be directed towards public interest groups, which would require additional researchers and legal counsel to build their case and represent their interests during these stages of the process.

If the purpose of the new revisions is to provide the opportunity for meaningful public participation in environmental assessment, then public interest groups require access to funding at these critical stages. Without a funding mechanism for approved participants, groups are at a significant disadvantage compared to most proponents subject to these regulations. An example of this occurred during the class environmental assessment hearings for timber management where Forests for Tomorrow was nearly forced to withdraw from the hearings due to funding constraints as a result of the proponent taking longer to present its case than was originally anticipated.

Therefore, we recommend that a funding mechanism be included under section 8 and section 9 of Bill 76. This will enable non-government, not-for-profit organizations to participate in mediation processes or public hearings equitably on a level playing field.

The Environmental Assessment Act of 1975 currently applies to all public sector undertakings unless exempted by the minister. Conversely, private sector undertakings are exempt unless otherwise requested to be designated. To demonstrate how successfully this system has worked in the past, 278 of 333 public projects were exempted from meeting the requirements of the EA act within the

first 10 years that it was in effect. Similarly, between 1983 and 1985, there were only six requests for private sector undertakings to be designated under the Environmental Assessment Act. Of these six, four requests were rejected, one was withdrawn, and one which was referred to the Environmental Assessment Advisory Committee for comment was later withdrawn by the proponent.

According to the Canadian Environmental Law Association, the use of the exemption clause under section 29 of the Environmental Assessment Act, now identified as section 3.2 of Bill 76, is one of the most controversial issues surrounding environmental assessment in Ontario. In the past, there have been no criteria to determine which projects should be exempted. There are no procedures outlining the process to be followed for exemptions. Consequently, most projects have been excluded from the EA act on an ad hoc basis. Traditionally, there has been no public notification of projects to be exempted from the process and no opportunity for the public to respond or appeal an exemption decision. Section 3.2 of Bill 76 does little to address these criticisms in the future.

Therefore, Friends of the Forest recommends that there be public notification of project exemptions and an opportunity for the public to respond to these exemptions. We also recommend that there be some fixed criteria used to determine which projects will be excluded from the regulations under the EA act.

Since the original purpose of the act "is the betterment of the people of the whole or any part of Ontario by providing for the protection, conservation and wise management in Ontario of the environment," then why distinguish between public or private sector proponents when the end result is the same? Either there are environmental impacts associated with a project or there are not, regardless of who the proponent is.

This is particularly relevant when one considers that our society is moving towards more privatization and less government intervention. This change in itself is not necessarily a negative step. However, one must consider that our economy is largely dependent on the use of natural resources. Our forests, our water, our air are held in trust by the government for the use and benefit of all Ontario citizens and not for the profit of one particular private company. Should there be continued efforts towards more private control, then private projects which have potential significant environmental impacts need to be evaluated on the same basis as public projects and therefore subject to regulations under the Environmental Assessment Act. Continued exclusion of private sector undertakings in the face of our new economic climate will jeopardize the ability of the act to protect our environment.

Therefore, we recommend that the Environmental Assessment Act apply to any and all projects which have the potential to significantly impact upon the environment, regardless of who the proponent is.

Class assessments are described as projects which have important characteristics in common. Typically, they are relatively minor in scale, recur frequently and have a generally predictable range of effects. Though significant enough to require environmental assessment, the projects are deemed to cause relatively minor effects to the

environment. With the exception of the class environmental assessment for timber management in Ontario, the class assessment approach has been used successfully to streamline the environmental assessment process. Class assessments have been submitted by municipalities, conservation authorities, various provincial ministries and Ontario Hydro.

The current Environmental Assessment Act does not include provisions for the use of class assessments, since this approach to environmental assessment occurred after the act was passed in 1975. Bill 76 provides a legal basis for the use of class assessments. We consider this inclusion to be a positive step, because the development of class assessments will be consistent among proponents. However, it is important that the class assessment approach be limited to projects that truly fit the definition above and not applied to such projects as timber management in which the environmental impacts are neither minor in scale nor the procedures routine in nature. Another criticism of the class assessment application is the lack of mandatory public consultation required during the development of the terms of reference.

Finally, there is no requirement by the proponent to evaluate "alternatives to the undertaking" or "alternative methods of carrying out the undertaking" as part of the preparation of a class EA. This step would only come into effect if a particular class assessment is requested to be bumped up to a full environmental assessment.

We also recommend that there should be an expiry date of five years placed on approved class EAs. This way, any new technologies which are either unknown or cost-prohibitive could be re-evaluated and incorporated into the new class EA, thereby improving the effectiveness of the process.

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Mr Gravelle: Thank you very much for your presentation. It was truly an excellent one. You really have homed in on the flaws in the bill in terms of the things that need to be changed. As we continue these public hearings into the bill, consistently the message is coming across that the areas that need to be improved are obviously the whole element of consultation on the terms of reference at the beginning part of the process, and I think you make the point really well in your brief when you say that in the long run public consultation could actually be beneficial to all parties concerned. The point has been made by proponents as well that if there is public involvement at the early stages, there's a much better chance that the process will — I've been using the term "maintain some integrity" and I agree that we need to do so.

Tell me more about your thoughts on that, how important it is in terms of a project being able to basically be helped out by having public consultation at that early level.

Ms Brigham: If you have parties like public interest groups that are involved at that point in time, then whatever the contentious issues are will be identified and then the teams could work together to come to a common solution, particularly if it's a resource-sharing issue or something like that.

Mr Gravelle: You've just stated it so well and it's been a consistent message, and I do think that obviously those —

Ms Brigham: In the long run it would save time and it would save money if everybody was working together and you could identify those and come to some sort of common ground.

Mr Gravelle: Intervenor funding has been another one of the consistent issues, the fact that legislation such as this and the whole concept of environmental assessment is a complicated process and it's very complicated for lay people. You talk about the need to have funding so you can hire researchers and lawyers to do it — and we don't want to start a tirade in any way against lawyers, because certainly they perform an important role. But there's no doubt that unless there is intervenor funding, no matter who it is you hire — Friends of the Forest, for example, wouldn't have the resources to basically get involved in a process, I wouldn't think, in any kind of meaningful way if you weren't able to find some assistance. If you need to do that research, you need some help to do it.

Ms Brigham: Sure. The main thing with public participation in any hearing or review of a project proposal is that most of the people work for non-profit groups and they're not being paid to spend the time to go over any of this, whereas the proponent, that's their job. They put the plan together, they review it. If it's a government proponent, then it's government-paid employees who are doing that, whereas the public interest groups have to do it on their own time. They already have jobs, most of the time, that they're spending 40 hours a week at, so they have to take all the extra time they have out of their lives to be able to do something.

That's why I think it's really important that if they can get access to it, apply to some sort of funding mechanism, then they'll be able to participate on an equitable ground. Maybe they'll be able to hire somebody to help them put together the research that's necessary, or maybe they have somebody who's a lawyer who could already participate who's part of their group and they could cut the cost. But still they need some additional help. They can't spend all their time trying to fund-raise; then they wouldn't have any time at all to review the proposal or to participate in the hearings.

Mr Gravelle: It's probably not a fair question, but have you got any ideas as to how the funding mechanism could work? There's been a fair amount of discussion about how it doesn't work, but have you got any concept, or what would your thoughts be in terms of how the funding could be put in place?

Ms Brigham: Not really. The only thing I had thought of was that if there was some way where people could apply — you would have the groups identified already as to who would be approved to participate in the process and you would know what the issues were, so you could have some sort of — maybe they apply, they put together a short plan outlining what they need the money for, and then the money would be approved at that point. How much would be dependent upon whether they put in the proposal, and maybe, you know, a budget of how much they thought they needed. You could have a certain set allotment for various activities.

Mr Gravelle: I'm very impressed with your presentation. I know that those on this side agree with many of the amendments, and I hope the government is getting the message as well. I think they are basing some of the comments they've been making the last couple of days too on the need to obviously consult. It's important to have it much better defined than it presently is in the bill and I hope they listen to your amendments. Thank you very much for coming here today.

Mrs Boyd: I think your colleague had something to add to the funding thing, and I wonder if she would like to go ahead and do that, because that's fine.

Ms Lucie Lavoie: I was simply going to agree with the previous speaker that funding shouldn't be available at the beginning of the process, when defining the terms of reference, in a separate way from actually participating in the EA, because I believe that many of the conflicts can be overcome during the definition of the terms of reference.

Mrs Boyd: I certainly agree with that and I think that's an important issue.

Friends of the Forest is larger than just a local group, isn't it? Do you want to talk a little bit about what kinds of things you've been interested in in the past, and in that respect the notion that Mr Doyle talked to Ms Wanlin about, whether or not people who are not locally and immediately involved in an EA situation, whether it's ever appropriate for people who have a broader public interest to be involved in this process? I'm a little concerned because I hear people saying, "We don't want busloads of people coming in from outside." I'd really like to hear you talk about when it might be appropriate for people who have a broader public interest — for example, maintenance of old-growth forest — to be part of a process like this.

Ms Lavoie: Friends of the Forest is a regionally based organization, but we do focus much more broadly than just on the Thunder Bay region. We are concerned about forests everywhere and we have a special stake in the boreal forests because there aren't a lot of organizations that work on boreal forest issues.

With respect to having outside interests coming into a case in a particular community, I believe that quite often many of the environmental consequences of development projects affect everyone in Ontario or Canada. They aren't necessarily limited to that particular community. Often what happens is that the good of society as a whole is overlooked and often public interest groups play a very important role in bringing some of those issues to the fore. Although the old-growth white pine forests are important for the people who cut them in Temagami, for instance, they also serve a very important function for people from Thunder Bay who might want to go canoeing in an area that has old-growth white pine. So it's very important to include a broader range of interests around a particular issue.

Another instance where Friends of the Forest has had experience is with native communities in the north, especially native trappers who have been very concerned because forest companies have come and have cut many areas that they need for trapping. They feel that they don't have recourse, that they have no one who will

listen to them. In such instances, groups from outside can give a voice to people who can't negotiate the system or don't know how to negotiate the system.

Mrs Boyd: I notice that you rely, for example, on the Canadian Environmental Law Association, and we know that the Sierra Club is putting a legal defence fund into place as well. Those are groups that have a broad experience, not only in Canada obviously, but really across the world, and know about the common kinds of issues and the implications of the kinds of decisions that are made, not just on our jurisdiction, but on other jurisdictions. It would be a shame if they were not allowed to participate in the discussions throughout some of these situations.

Ms Lavoie: It's absolutely essential that they be allowed, because in many ways many of the proponents are multinational corporations, or very large corporations, that have access to a worldwide network of information. Why should the same not be true of smaller proponents or smaller interests like environmental or non-government organizations?

Mrs Boyd: Exactly.

Ms Brigham: We often feed off each other. If there is a local issue that a group is working on and we don't have the resources, we will contact other groups from other locations and ask for either their help or their political support, whatever it is that's needed to get through. Usually, as far as regional issues are concerned, outside people are invited in by the people who are participating, and they would work through us to voice their opinions.

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Mrs Boyd: Have you a view on the mediation issue, how important it is to try to resolve these problems outside of the courts or outside of very lengthy hearings? I know that the length of hearings is very draining for people and is as much of a concern for proponents and public interest groups alike. Have you a sense on the mediation aspects of this bill?

Ms Brigham: I think mediation is an excellent alternative to making it more legalistic, particularly if you have people who are not familiar with that kind of process at all. It makes it a more comfortable environment for them to be able to participate. I had some concerns as to how you would reach a win-win situation between the two different parties if they're not about to give and what alternative they would have at that point in time, either to take it to a higher level or something. But other than that, I think it's good. If you can get the issues worked out at that level, then it would be beneficial all around.

Mrs Boyd: It's also hard to have mediation unless there's a fairly level playing field. If in fact there is no support for the public interest groups which want to have some say in a proponent's proposal, it makes it very difficult for mediation to be very meaningful, if you have an elephant on one side and a mouse on the other.

Mr Pettit: Thank you, Deneen and Lucie, for your presentation. I'm wondering, could you please tell the committee what direct involvement either of you or your group has had with the EA process and, if so, the roles you may have played?

Ms Lavoie: We didn't have a direct involvement in the EA process. We were formed about four or five years

ago. The process was already under way. We kept up to speed as to what was happening, but we weren't directly involved.

Mr Pettit: Throughout our travels in the last two weeks we've heard from, as you probably know, many groups. We've heard a constant theme from those groups, both pro and con, that in their view there seems to be a lack of certainty to the process, along with horror stories about the lengthy time frames and horrendous costs. They seemed to agree, at least for the most part and with the majority of the amendments, that this will solve a lot of those problems. Would you agree with that?

Ms Brigham: I'm sorry, would solve what?

Mr Pettit: That the amendments in Bill 76 will increase the certainty to the process and, in so doing, will reduce a lot of these lengthy time frames and tremendous costs involved in the process. Would you agree that the new amendments are going to alleviate those concerns?

Ms Brigham: I think having some sort of set deadlines for reviews and responses to reviews is a positive step. Yes, it can move the process along a lot quicker than having it go on indefinitely with no time lines on it.

Mrs Margaret Marland (Mississauga South): I'm very interested in two areas you've highlighted for us this afternoon, the first being intervenor funding, because I have to admit that in the early 1980s and late 1980s, before I went to Queen's Park in the early 1980s and then in the late 1980s when the Liberals were the government, I was one of the people who pushed for intervenor funding. It's very interesting to admit that 10 years later I've come full circle on this issue. I've done it through personal experience in my own riding.

One thing I've learned, because I'm dealing with a very difficult environmental issue in my riding currently, is that if there is enough level of concern in the community, the expertise is there, and it's there on a volunteer basis. If there is additional funding needed, it also is there. I think where that is of value to all of us — and I can say this because I've been on both sides; as I say, I was one of the advocates for establishing intervenor funding when Jim Bradley was the Minister of the Environment — where it has an advantage is that you know if you get the support in the community and it is established and it is broad-based to the point where people are willing to throw in their \$10 or whatever — there is a group in my riding right now that is fund-raising — then that says to the issue and in fact to the proponent and ultimately to the government, "Look, there are enough of us who are concerned about this that we're demonstrating our concern by our support."

In one case in my riding, we won a hearing at the Environmental Appeal Board which the board itself acknowledged wouldn't have been won without the community involvement. That community involvement was all volunteer expertise. There was no payment for the time that the community representatives — some were lawyers and some were accountants and so forth — put into preparing for that hearing.

The advantage of that is that it eliminates a situation where you might have a very small segment with a very particular vendetta against a particular application. The fact is that you don't have the David and Goliath scen-

ario; you have something demonstrated by the participation of the community.

The money is there. Look at the Environmental Defense Fund. These organizations have a lot of money, and they have given groups in my community money in the past to support their causes because there was enough concern demonstrated that they believed in it. I heard you say a few minutes ago that people shouldn't have to spend their time raising money to fight a particular proposal. But that really doesn't have to be the case. When intervenor funding comes voluntarily from people with a concern in the community, would you agree that the intervenor funding from the community is a stronger demonstration of concern than intervenor funding that's extracted through taxes, through government?

Ms Lavoie: I strongly disagree with you that the community can raise funds even if it is really concerned about the impact of a particular project. Many of the communities in northern Ontario are very small; many of the projects that are happening in northern Ontario are very large. Right away, even if everyone in a particular community — for instance, a native reservation in the north — is strongly opposed to a project, they don't have the money. Even if they pooled their annual incomes all together and tried to put it together, they wouldn't have enough money even to get people to a hearing in southern Ontario. This particular scenario that you have that people in the community, if they are really concerned, will pull together their resources to fight, it's true, they will, but their resources may not even, and usually will not, approach the resources of the proponent.

Mrs Marland: But isn't that where the Environmental Defense Fund comes in? That's a national and international organization.

Ms Lavoie: I believe you put too much emphasis on how much money and how much organization many of the environmental advocacy groups have. Many of the budgets of the environmental advocacy groups are not as great as you think. They will do what they can. Many people work very long hours for very low pay because they are so concerned about what's happening to our environment. That's not to say that we should go on exploiting these people, trying to get as much as we can from people who are really concerned about what's happening. For any dialogue to be effective and any communication to be meaningful, both partners have to come from an equal position. Money unfortunately speaks very loudly, and I think if someone has more money than someone else, whoever has more money will likely have a greater impact.

The Acting Chair: Thank you, Ms Brigham and Ms Lavoie, for your presentation. We appreciate it very much.

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TRI-NEIGHBOURS WASTE MANAGEMENT

The Acting Chair: The next presenters are from Tri-Neighbours Waste Management, Mr Bonnett and Ms Hart. As you know or probably heard, you have 30 minutes, either total presentation and/or questions. I was going to say you should identify yourselves for Hansard, but I'm quite sure they know which is which.

Ms Carolyn Hart: Just for the record, I am Ms Hart.

Mr Ron Bonnett: And I am Mr Bonnett.

Ms Hart: In case there was any confusion.

I'd like to thank you for the opportunity to speak to you this afternoon. I'm the project manager with Tri-Neighbours Waste Management. I'm also a member of the Canadian Institute of Planners and a registered professional planner in the province of Ontario. I also hold a master's degree from Queen's University in planning.

We'd like to give you an overview of our thoughts on Bill 76 this afternoon and we hope we can provide you with some information that you can use when reviewing this very important piece of legislation.

Mr Bonnett: My name is Ron Bonnett and I am the chair of the steering committee.

Tri-Neighbours was established as a pilot project to determine if waste management planning could be done in a more streamlined fashion going through the EA process. We were extremely successful at doing that.

You have actually three pieces of information that we've presented: One is a summary document that we're going through today; the other is a presentation that we made to Mr Galt in April, and we're pleased to see some of those recommendations implemented in the new legislation; and the other is an example of the type of public consultation that we used in our process.

Our community has three separate municipalities in it. We've developed a waste management plan for 40 years. We began the EA portion of our study in February 1994, the document was completed and submitted to the ministry in March 1995 for approval and we received the approval in January 1996. We accomplished this at about 50% of the cost of waste management studies in the province of Ontario. I think a lot of that had to do with some innovative techniques we developed to do that.

Ms Hart: One of the first items we'd like to discuss this afternoon is the legal requirement to consult. What we have presented you with this afternoon is an example of the type of correspondence we send out to each and every mailbox within the study area. It's termed the Tri-Neighbours Tribune. We find that this type of consultation mechanism is quite effective in the sense that there are maps showing exactly the study area and what is being considered.

There are plain-language questions and answers on the back of this document, some of the common questions that people have which they may be too reluctant to raise at a public meeting. With these questions and answers, the questions are there — quite obvious questions — and the answers that are required. There's also technical information in that newspaper as well if people are interested in more of the technical side. There is also an opportunity for people to write in, and questionnaires have also been included in this document in the past.

We've sent out over four documents over the course of the environmental assessment process, and as I mentioned earlier, each and every household within the study area was given this directly to ensure direct public consultation and participation in the process itself. However, we also suggest that the definition of "public consultation" be broadened to include government agencies. We suggest that pre-submission consultation take place prior to the submission of the complete document.

In the past, we found that our task reports, tasks 1, 2, 3, 4 and 5, were sent to government ministries for review and comment. This did require resources on the part of the ministries to review the documents. In particular, municipal affairs, natural resources and northern development and mines commented directly on the documents. The documents were rewritten three times prior to submission of the final document. This increased the time required for the government review in the sense that when the documents were given to those ministries, they had already seen them. In fact, they had seen them three times, and the changes and concerns they had indicated during the review process were already in place by the time they received the final submission. Had these concerns been raised during the government review period, extensive negotiations, particularly with natural resources, would have occurred, thus adding to the time frames. So it's very important, we feel, that the definition of "public consultation" be broadened to include government agencies.

In fact, representatives from those ministries attended our public meetings. Any questions the public may have had, in particular regarding Natural Resources, could have been answered directly by the Ministry of Natural Resources representative there at the table, instead of the project manager or the consultant or the steering committee chair interpreting government policy. So we feel that's a very important item to be considered.

Mr Bonnett: Just adding to that, the whole concept was that you don't want to put a pile of paper in front of somebody that they've never seen before or have never had a chance to comment on before, and then all of a sudden you've got to go back to square one. We wanted to make sure that didn't happen.

Ms Hart: We believe that the proposed time frames for the government review cannot be met without the extensive use of pre-submission consultation techniques. The Tri-Neighbours submitted the environmental assessment review in March 1995, and the review lasted well into the fall of 1995, which is approximately eight months. The proposed 45 days for a public agency review of EA and 30 days for EA review and notice of completion is too short to adequately carry out this task. If we're going to carry out the pre-submission consultation, it is necessary that those time frames be lengthened. The 30-day final public comment period, however, is adequate, and the 90 days for the decision of the approval is adequate, as both those time frames were met within the Tri-Neighbours' EA exercise.

We also believe that the time lines should be set for proponents, in particular the municipalities, when preparing the environmental assessment and carrying out mandatory public consultation. Without the time lines, municipalities may drag out and rehash issues continually throughout the process.

Mr Bonnett: That gets into the municipal agreement that was drawn up between the three municipalities. We drew up an agreement between the three municipalities mandating that decisions be made at the steering committee table. We were not going to make a decision at the steering committee, have it go back to three individual councils, each council take a different interpretation and

come back, because you end up getting into a process that you never come to a decision. At times there were very tense discussions at the committee table, but we hashed the problems out there, made the decisions and moved on.

It has to be built into the process that the local people who are sitting on these steering committees have to take responsibility for some of the decisions they're making. They have to realize that you can't blame someone else for all the problems. You have to deal with the issues, make decisions and move on.

Ms Hart: The only item that had to be ratified by the municipal councils was the budget, but after the budget is approved, all other planning decisions can be made at the committee level as long as they are within the budget constraints. We feel that's the only area where it is necessary that municipal council ratification of decisions be made. These items, we feel, can be included right in the terms of reference, so up front everyone sees the level playing field, that the type of public consultation that's going to be done is going to be this type of newspaper that we saw, that government agencies are going to be included in public consultation, that the time frames would be set out and that decisions would be made right at the steering committee level.

The other added item that would be of benefit to the terms of reference is the amount of work done in-house by the project manager. In our specific case, I had authorship of tasks 1, 2 and 3, and the consultant took that work and did 4 and 5. Based on that, that was approximately \$50,000 worth of savings by having in-house creation of the first three task documents. They set out the planning rationale, they set out the environment in which the undertaking was going to be completed. This can be done right at the local level. It has to be led by the project itself, not by the consultant. In the past, we've seen other studies in which all five task documents are completed by the consultant. The prices of those studies have risen in the sense that they are done usually outside the study area.

That type of cost saving has been greatly enjoyed by the Tri-Neighbours group. In particular, the public consultation component is \$10,000 per meeting, and we handled that ourselves. We had 10 public meetings, and that was quite a cost saving for this particular project.

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Mr Bonnett: One of the other recommendations, too, is the fact that we should be into multicomunity efforts. It shouldn't be just one community dealing with landfill site problems. You should be dealing with multicomunity issues. There's no use spreading environmental damage all around. You might as well try and do it once and do it right. That's one of the things that we focused on with the three communities that we're involved with.

Moving into the reconsideration of decisions, I think one of the things that has to be recognized is once an EA is approved, it should stand unless there is some environmental damage that's being proven that is as a result of the study. It shouldn't be subject to reconsideration because all of a sudden some special-interest group springs up and they've got the not-in-my-backyard syndrome. People, if they're consulted properly through

the process and they go through all the steps to make sure that everyone has their chance for a say, you have to have a cutoff point where you move on from there. You shouldn't get your EA document in place and get your landfill site approved, and then all of a sudden people say, "Why are you doing this?" because they had the opportunity to go through in the beginning.

Ms Hart: Once the EA is approved, it should reflect the competent staff at the ministry level. In light of the recent government cutbacks and the increased pressure on staff, it is possible that municipalities may not receive adequate advice from the EA advisers. It is crucial, therefore, that throughout the environmental assessment planning process, the EA advisers provide consistent, reliable advice to proponents, as was done in our case, to facilitate the development of the EA submission that will meet the requirements of the act, while at the same time provide for flexibility to modify the submission to meet the circumstances of the local community.

Mr Bonnett: There is a paragraph in there on the mediation provisions. We strongly believe that mediation is the approach that should be taken. I think you can save considerable money by going through that process as opposed to litigation.

Ms Hart: Mediation is far less adversarial, costs less and results in solutions that are generated by the participants themselves. It is highly recommended by the Tri-Neighbours as a method of accommodating both public and private concerns.

Mr Bonnett: We agree with the proposed land acquisition guidelines, which authorize a proponent to acquire property in connection with an undertaking prior to receiving actual approval. There is an element of risk, but I think if you have done your homework and done things properly it is a calculated risk. It all lends into the sort of streamlined process that we developed as we went through and completed the task reports. As Carolyn mentioned, we were always revising the reports that we completed before, but we were always reaching ahead to the next step, and when we reached task 5, we were already starting to reach ahead into the EPA level work and start site-proofing the site that we had identified. So you don't get the process where you go to task 1, you stop and wait to see if it's approved, you go to task 2 and see if it's approved. You keep reaching forward and amending as you go. It's got to be a seamless approach.

Ms Hart: The Tri-Neighbours agree that authorizing the ministry or the board to defer making parts of decisions better suited to an appropriate decision-maker of technical detail would lead to better decisions. The particular sections, 11.1 and 11.2, I think, are excellent sections to be added to this bill.

The non-applicability of section 2: This section of the act authorizing the minister, in the public interest, to declare part or all of the act or the regulations not to apply to a particular undertaking must be carefully considered. The Tri-Neighbours suggest that guidelines clearly state under what circumstances and the rationale that would invoke such provisions would be in order to ensure that the act would not apply.

Mr Bonnett: One of the things we noticed in the material that came around, the position of the director has

been identified and there are certain responsibilities that go with that position. I think it's going to have to be very clearly spelled out what that person's role is, what the qualifications are and I think it's going to have to be a careful selection process that is based more on qualifications than on political expedience, because it's a very sensitive position.

Ms Hart: Generally, the Tri-Neighbours wish to encourage joint service planning. As indicated earlier, we are three municipalities working together on this and these types of partnerships ensure that cost-effective and timely waste management planning in Ontario will be the future way to go. Also, the Tri-Neighbours strongly agree with the concepts of early and clear direction on the kind of information to be included in environmental assessment documents in order to meet the requirements of the act. However, we suggest that flexibility and the ability to modify the document to the circumstances of the local community must be ensured. This can only be achieved through the use of competent and qualified environmental assessment advisers from the environmental assessment branch. The expert advice provided to the Tri-Neighbours during the development of our plan was a key factor in the cost-efficient methods by which we were able to complete the document in only 13 months.

Mr Bonnett: In addition to the EA branch advisers who were assigned to us from Toronto to work with this pilot project, the role of the Sault Ste Marie district office was — it was unbelievable the support that they gave us. We had an EA adviser from Toronto attending our public meetings and local staff attending meetings. We were given competent, timely advice. I think one of the clear things is that when you have an EA adviser advising municipalities, they should not only be able to read the legislation; they should be able to interpret and advise. I think you've got to have that flexibility to understand the legislation and give proper, competent advice to the people who are in the field implementing it.

One of the other key components, and I think it reflected through our whole study, was the fact that it was locally driven. We hired a competent staff person with a planning background. The consultant was our employee. The consultant did not drive the process. The legislation did not drive the process. We knew we wanted to select a new landfill site. We knew we had legislation to comply with. We made sure we had competent staff to deal with it at the local level and the consultants who were hired were given very specific direction of what was expected of them, and the committee itself became very involved in the process, as well as the public.

Ms Hart: We strongly believe these ideas must be included in the future terms of reference for environmental assessment if cost-efficiencies and a timely process are to be achieved. The Tri-Neighbours believe some training should be made available for steering committee members in order that they can be made aware of their decision-making function. The concepts of a municipal agreement and the committee structure for effective decision-making must also be included in these terms of reference.

Mr Bonnett: The attached document with the comments made, Mr Galt, include some nuts and bolts of

how to streamline the process, simple suggestions like instead of sending — it was how many documents? — \$2,000 worth of printing to circulate for the environmental assessment review, that could have been put on computer now and distributed by Internet. The savings would be, if you look at it across the province, quite a bit. There are little things like that that you can do to save money. I think sometimes we get a view of, this is how it has been done and that's the way it should always be done. We've got to look at new ways of doing it.

Ms Hart: Once again I'd like to thank you for the privilege of being able to address the committee this afternoon.

Mrs Boyd: I want to thank you very much for your presentation: very interesting as an example of how municipalities can work together and can work with provincial government employees to make something work. So it's very helpful.

I must tell you that as I was listening to you, I was thinking to myself that you're already halfway there in terms of wearing two hats, because of course you have to represent the public interest because you're municipal governments, very different from commercial operations in some cases, and of course this bill has to apply to both. So it's very good for us to know that for public organizations like municipalities, you already — I mean, in order for people to maintain office, they have to show they're following the public interest, and that's very different from a corporation. So in trying to do a bill like this, we need to meet both needs. Much of what you say is very valuable in terms of making the process work for municipal governments, regional governments, that sort of thing. It's very, very valuable.

But I'm wondering if you could give me some kind of sense of how you think it would be applicable where the proponent is a profit-making, multinational corporation. Is it possible? I mean, is the same methodology possible?

Ms Hart: I do believe the concepts of presubmission consultation would be applicable. Getting issues out on the table and even scoping them down prior to submissions being made is always going to result in efficiencies both in costs and in the actual review time. So that concept would stand. The mediation concept would stand as well. Solutions generated by participants take much more ownership and they seem to be longer-term solutions and more of a win-win slant is based on them when we come up with them ourselves. So those two concepts in particular would be applicable.

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Mr Bonnett: I think, though, the other thing is you have to remember that municipalities, while they are elected to represent the public interest, especially currently, we are very profit- and cost-driven as well, so we may be cruller and meaner than some of the for-profit corporations at the present time.

Mrs Boyd: You must have visited my municipality recently.

Mr Bonnett: I think that you develop the process and I think it would apply equally in both cases.

Mrs Boyd: That's really helpful, because that's one of the issues that needs to be there.

I think you're absolutely right about the timeliness of consultation and review by ministry officials. You're fortunate you were doing it when you were. As you know, both MNR and the Ministry of Environment, many of these people no longer are available to groups for this kind of consultation because there has been such a downsizing in many areas. It's going to be harder and harder to get the kind of expert help that you had and to have provincial employees be able to assist at that early stage. I personally think it's going to, in the long run, prove detrimental to this whole process not to have that expertise in the beginning because it will spin out those conflicts later on, or even a worse outcome, we will miss things and in the long run the environment will suffer.

Mr Bonnett: The ministry consultation was very, very important.

Mrs Boyd: I can tell that from your presentation. It's very important to keep the public on board to have those questions answered by the experts at the time they arise.

Ms Hart: Yes, right at the public meeting. There's no need for a middle person to interpret that. They can provide the policy explanation right at the table. We had over 80 people in attendance at public meetings because on the advertisement it said: "MMA will be here. MNR will be here. If you have a question, ask them."

Mr Bonnett: And people did ask.

Mrs Boyd: I'll bet they did.

Ms Hart: And 80 people in attendance at a public meeting is very well received in our area. That was an excellent turnout.

Mr Bonnett: I think the thing is, when you're looking at the cost of the process, the cost of having that advice up front is a lot cheaper than having a group go through the whole process and then have to go right back to square one. So there's got to be a mechanism for getting those specific government comments into the documents before they get to the final page.

Mrs Julia Munro (Durham-York): Thank you very much for joining us. I certainly appreciated the comments that you make here. I want to follow up on a couple of the comments that Ms Boyd made, because I too recognize that the difference here was naturally where you, as a municipality, were the proponent. But I think what you're suggesting here is that this provides us with a vision of how this process can be made to work. Certainly that's where the value lies, in your being able to provide us with this.

I wondered if you could, based on that, give us a couple of pieces of information with regard to things like the steering committee. The reason I want to know this is how you would see that change if you're talking about a private proponent.

Mr Bonnett: My personal feeling is that a private proponent would have to reach out into the community and identify interest groups and members who would sit on a steering committee for a private environmental assessment as well. I think they would have an obligation to identify individuals who could represent the interests of the community at large and draw them into the process.

One of the strengths of our steering committee is the diversity of the members who sat on it. We had people

who knew the history of the area for 50 years back; we had people who were new to the area. That gave us sort of an overview of issues that wouldn't be identified by a consultant, wouldn't be identified by a ministry person. If you mandated that the companies had to have a selection process built into their terms of reference for how they were going to appoint a steering committee to walk it through, that would alleviate some of the problems.

Mrs Munro: Following up on that then, what do you see as the role for municipalities in that kind of context?

Mr Bonnett: I think they would definitely have to have a representative on that steering committee, a representative from the municipality, to represent the interests of the municipality.

Ms Hart: When representing the interests, be it an environmental group or a municipality or any other particular identified stakeholder, there are opportunities within the process which are clearly found within Bill 76 that you can identify and weight the criteria throughout the actual environmental assessment process to indicate your concern or where your interest is. The actual weighting of forestry or soil conditions or distance to buildup areas or distance to roads can all be identified and your interests can be used directly in the process by saying, "I am weighting the importance of forestry above distance from schools" or "I am weighting the distance from the airport higher than the soil interest." It's very clear within Bill 76 in that you have the chance to do that and the process recognizes the interests of the public.

Mr Bonnett: Maybe even adding on that, the practical way that we built the public consultation into this process, we started those newsletters — I think there were a total of five went out — and we developed some questions of what things the community people thought were priorities. They had mail-ins; they could call in. We documented their responses. The next issue that went out, we showed what their responses were; we showed how we had changed the document to accommodate those responses.

In the case of a private company, if they had that same sort of process, then people would feel they are part of the process. I think one of the strongest things you can do in an environmental assessment process is make the public feel they are part of it. They don't want to be presented with, "Here it is, like it or lump it." They want to feel, "I've had my say; oh, yes, I can see where you took in some of my considerations," or "I can see where you've considered it, but yes, I agree with your argument that it doesn't apply." But they have to know that they're part of it. I think that's key.

Mrs Munro: If I might just ask one other question, you referred to a municipal agreement. A few days ago we had someone who raised the issue of a community agreement. I'm just wondering if you could give us a couple of points on what you mean by "municipal agreement."

Ms Hart: The municipal agreement is a document devised by the three municipalities clearly stating our roles that each of us would play throughout the process. It also clearly states the voting structure, the responsibilities they have, the fact that they're going to make decisions at the table. They won't be going back to

council after this is approved, after the budget is approved. You'll be making the decision that night. Some of our meetings lasted until midnight because a decision had to be made. We had to keep the process moving. Those types of things are in the municipal agreement.

Mr Bonnett: As an example of bringing ministry people into it, when we were drawing up the municipal agreement, we had a vision of how we wanted it to work, and we knew we had to make the decisions at the table. We had a representative from municipal affairs come to the meeting, sit down with the councils, and explain that it was legal for the steering committee to make these sorts of decisions on their behalf, so that then we weren't into this constant rehashing of issues between municipalities.

Ms Hart: That should clearly be included in the terms of reference. In fact, we suggest that the Tri-Neighbours terms of reference can be used as generic terms of reference if required, because these items we are talking about are reflected in our terms of reference: the municipal agreement, the presubmission consultation. This is going to be fast; it's going to be cost-effective. It was right up front and provided a level playing field for everyone.

Mr Gravelle: Thank you very much for coming to Thunder Bay, and welcome.

Mr Bonnett: Glad to be here.

Mr Gravelle: Did you drive or did you — the north is a big place.

Mr Bonnett: It is.

Mr Gravelle: This is really a very exciting presentation, because it truly is, I think, in some way the model that we've all been in some way talking about, looking for, trying to find solutions to things. It's good timing perhaps, as we near the end of the public hearings, that your story is being told, because it really is quite remarkable.

I'm really interested in the public consultation. We probably don't need to explain it better, but I'm just curious. I understand from listening how you did it or what happened, but I'm curious about the objectivity thing. Somehow you were the proponents in essence but you were viewed comfortably as being objective in terms of truly wanting input, and I can see by some of your communication techniques why they would work. That's really the trick, I think. That's the trick.

Mr Bonnett: That's the key.

Mr Gravelle: That's the key. What is it in essence? To me, it also has to do with you sitting down and having an attitude; there's a genuine desire to be totally fair and objective. So just tell us if you can in some way how you did it or —

Ms Hart: That's exactly it. We didn't want the consultant to come in and set up an intimidating type of structure, which I have seen in the past. We just tried to present ourselves as totally objective and wanting the best for the communities. We're from the community. We want the best for the community, and we did more of a facilitation technique as opposed to consultation. We drew in people, 80 people, everyone talking. We had coffee. We sat down. It was quite effective and quite

useful, and it wasn't a lot of just lip-service, if I can use that term. It was real facilitation.

Mr Gravelle: These are methods that are there, but you sort of changed the way things are normally done, and of course obviously it's one where people feel they're truly involved and their input does matter.

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Mr Bonnett: But I think when they saw their questions coming back to them in the next issue, showing how it was amended or how it was changed — another thing too is that you mentioned attitude. I think a lot of groups, municipalities or businesses going into environmental assessments see the words "environmental assessment" and they see this horrifying dragon rather than the two words "environment" and "assess," trying to figure out how you can do the least damage to the environment and proceed with a project. We took the attitude that we were going to go through this, we were going to do it as fast as possible but address all those environmental concerns, address all the concerns of the public through it. Once you take that positive outlook at the start, rather than beating up on the provincial government or the federal government or the guy down the road because he doesn't agree with you, then you can work through the process.

Ms Hart: A lot of plain language was used. That was another key.

Mr Bonnett: Some of it really plain at some of the public meetings.

Mr Gravelle: I'll bet. Just changing gears quickly, I'm curious about the fact that you talk about section 11.3 in terms of the ability of the minister to have an EA approved and then have it revoked afterwards. Obviously that is an interesting concern.

Ms Hart: Yes, because our EA was approved in January and we immediately began Environmental Protection Act work; again, as a pilot project, to do it streamlined, do it quick, do it fast. We were already eight months into it, ready to submit fairly soon. Later, if something did come up, we'd still want the best for the environment. We would want that to be addressed. However, I would rather just not have that fear. I feel we did an adequate job the first time around and we addressed those concerns.

Mr Gravelle: Why would the minister want it in there?

Mr Bonnett: That's a good question.

Ms Hart: Unless new information came to light, because we do not want to contribute to any environmental degradation.

Mr Bonnett: As a closing note, I'd like to say that the new landfill site should be open next spring. We started in February 1994 and it should be open in February or March 1997.

Mr Gravelle: Congratulations.

The Acting Chair: On that note, we'll stop this one. Hopefully you'll invite us all up to it, because it's great to hear a success story in landfill for a change. I compliment you on it. I know I'm supposed to be neutral, but I can't. I compliment you on it, sir, and thank you for your presentation, both of you.

Mr Bonnett: Thank you for the opportunity.

FRIENDS OF THE KAM

The Chair: The final presenter today is Friends of the Kam, Julian Holenstein. Julian, welcome to the group.

Mr Julian Holenstein: Thank you very much. I guess I should start with a brief introduction about who the Friends of the Kam are because it's hard to tell from that name what we're actually all about. Friends of the Kam is a non-profit community group representing and supported by recreational users, naturalists, sportsmen, municipalities and local businesses. Our work in the past few years has been opposing further hydro-electric development on the last remaining wild water sections of the Kaministiquia River. This river is already shared with two hydro-generation facilities operated by Ontario Hydro. The river, for those of you who haven't heard of it before, is located about 20 kilometres west of Thunder Bay.

Since 1986 our group has rigorously opposed two private sector development proposals put forth by Kam Power Corp. For over 10 years now we've participated in Environmental Assessment Act processes. They have included public reviews, an intervenor funding hearing, meetings with independent mediators and impromptu resource-sharing discussions initiated by MOEE staff from the EA branch.

In some ways the existing EA act has worked. All of us are fortunate that the last remaining wild water section of this river remains free-flowing and continues to be used by a multitude of recreational groups. However, with this said, 10 years is still an absurdly long time for EA act participation by a local community group. During both the Kam 1 and Kam 7 EA reviews, burnout and frustration with the EA process was clearly evident from all sides, including user groups, government ministries and the proponent.

Friends of the Kam has spent many long days within the current EA process. Given our past experience, we are very concerned that the contents of Bill 76 could erode any progress we may have made in securing protection for the Kaministiquia River. In many ways Bill 76 appears to be taking a giant step backwards for environmental protection.

When we first received Bill 76 and we looked at the title, it had a great title. It said it was "to improve environmental protection, increase accountability and enshrine public consultation." Ironically, after we'd read the bill we felt that it would jeopardize environmental protection, decrease accountability and erode public consultation. Our greatest concerns lie with the sweeping powers given to the minister and the limited requirements for early public consultation.

I'll talk first about public consultation as that's where we have some of our major concerns. The EA legislation must provide opportunities for public participation throughout the EA process, particularly in the early stages of EA planning when critical decisions are being made. Public participation must occur before the proponent has made significant financial commitments in a project in terms of research costs necessary to prepare the detailed terms of reference.

Bill 76 does not provide early consultation during the development of the critically important EA terms of

reference. It is during this stage that significant environmental problems or conflicts should be identified. On some occasions, conflicts will be so apparent and significant that the proponent may decide to voluntarily withdraw before significant project costs have accumulated. The minister or the MOEE could also at this time advise the proponent not to continue. On other occasions, it would become clear early in the process that there were no conflicts.

Other problems with consultation with Bill 76 include provisions that do not require early public consultation on proposed exemption declarations or harmonization orders; give no definition of what constitutes "consultation" or who an "interested person" for the purposes of consultation would be, and this appears to be a decision that's been left with the proponent; and offer no requirement for the proponent to provide intervenor funding to facilitate meaningful public participation during hearings or mediation. This is extremely important to small, community-based groups such as Friends of the Kam. It also offers mediation proceedings that are kept closed from the public. That's something we strongly disagree with.

In terms of ministerial powers, in many situations throughout Bill 76 numerous discretionary powers are conferred on the minister without public notice requirements or detailed implementation criteria. We feel these powers could seriously jeopardize the bill's goal of increased accountability. For example, Bill 76 empowers the minister to approve terms of reference that may not include important EA requirements that exist in the current act; to grant wholesale exemptions from the EA act to any proponent or undertaking; to scope or narrow the matters to be considered in environmental assessment hearings and to dictate the length of these hearings; and to deny reasonable EA hearing requests if the minister feels that it "may cause undue delay in determining the application." This has given the power to the minister to say: "Jeez, this is going to take too long. Let's just go ahead with it; forget the environment."

In summary, Friends of the Kam supports the need to improve the existing EA act and especially the need to introduce reasonable time lines throughout the process. However, we do not support Bill 76 as drafted and we feel that it should not be enacted until it has been substantially amended to address the concerns we have noted today. Most importantly, we urge you to reintroduce a process for intervenor funding so that small community groups such as Friends of the Kam can participate on a level playing field.

We also encourage members of the standing committee to open and review the EA branch files for both the Kam 1 and Kam 7 projects as a working case study for northwestern Ontario, using the legislation proposed in Bill 76. This would provide an opportunity to see what improvements, if any, the bill might enable, especially in terms of reducing the 10-year time line that was required to resolve this land use conflict.

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Mr Galt: Thank you for the presentation and coming to see us today and presenting. I think it's been generally agreed with the three different parties and many of the presenters that the system that we have is broken, that it

hasn't been working for some time. What we're trying to do is build on the base of information — the advisory committee and some of its reports — and public input. We've put together this bill and we're out on the road for hearings. I can walk through a whole bunch of time problems. One came up in North Bay just on Tuesday, that it took — they're still into it — 13 years to site a landfill site and they're still not there. That's very unhealthy for those people who live around and are concerned about it.

There are two questions I have for you. One relates to closed mediation proceedings, mediation being informal once you open it up. I very much stand for open meetings when it has anything to do with government, but I'm concerned that if we had open mediation meetings they'd become formal and more like arbitration. The general feeling we have heard from public groups would be that once the hearings were over the mediation information and meetings would be made public. Why do you feel the mediation should be open?

Mr Holenstein: I understand that mediation is a delicate occurrence and might involve only a few individuals, but at the same time it could be set up that where they were having their discussions the room would be open, similar to the setup we have here, where people could sit and listen to what negotiations are going on, so nothing is behind closed doors, so it's not a mystery. This increases accountability. That's the way I feel about the mediation process.

Mr Galt: Even though it might hamper productivity and getting on with an agreement between the public and the proponent?

Mr Holenstein: It shouldn't hamper any productivity unless there are some — usually shady — deals going on with these discussions. We're dealing with the environment. They're very concrete subjects that we're talking about, so there shouldn't be any sellouts, if that's the right word, during the mediation process. They would have very concrete discussions, so unless there's something going on that someone wants to hide, it should be made public.

Mr Galt: If they know it's going to be made public following the hearings, the public is going to be aware of the decisions and how it was negotiated out.

The other question I had relates to interested parties — and it's come up different times — who should be involved. In North Bay, on Tuesday, they were very concerned about the busloads who come up from the south, creating problems for people in the north. I come back to the interested parties. Should it be in the local community? Should it be that of the region, Ontario, Canada, international? How do you come up with what the interested parties should be?

Mr Holenstein: I guess it's hard to set limits on it, and I don't think there should be limits set on it. If busloads of people are coming up, that shows they have a very strong and personal interest in it. You don't have to be living in a community, or five or 10 feet, a kilometre, 10 kilometres, 20 kilometres and so on further away from the site, to still have an interest in it. I'm happy that they're setting aside rain forests in BC, yet I haven't jumped on a bus and gone out there. As far as

participants go, if someone wants to make the journey to a site, if it's important enough to them, they should be allowed to participate.

Mr Galt: Including, say, Iraq or Russia?

Mr Holenstein: Sure, but I think that's getting a bit extreme when you start leaving the boundaries of Canada; I would agree with you there.

Mr Galt: So you'd see it being limited more within the national boundaries?

Mr Holenstein: Sure. Well, national. Most issues where the EA act is used are going to be of provincial interest, given it's a provincial act, so if you wanted to limit it to the province, that would certainly be acceptable.

Mrs Munro: I want to follow up on that issue, because it is certainly something that many people have looked at and been concerned about. When you make the comment that the legislation shouldn't set limits, frankly, I agree with you, but I feel that where it says "with persons as may be interested," that is the intent in order to make it as great a number as possible.

To me, that's how I interpret that. I'm concerned that as soon as you start making a list — you pointed out so many kilometres away and things like that. I agree with you that that does set limits. For the same reasons, I think this is a safer way of making it open for those people who see themselves as interested in the topic. As soon as you make a list of any kind, you have in fact left out everybody who isn't on the list.

Mr Holenstein: Right. I'm comfortable with where it says "all interested persons," but it's how that is determined and who determines that. When you're dealing with legislation that's going to be interpreted in the courts, there has to be a mechanism to sort that out.

Mrs Munro: Would you agree then that this should be part of the terms of reference, that if those were agreed upon —

Mr Holenstein: That public consultation should begin during the terms of reference?

Mrs Munro: Yes.

Mr Holenstein: It certainly should begin there. As I mentioned earlier, this is a key area because when a proponent is preparing terms of reference, it's likely they're going to be investing significant dollars right from the start, using consultants to prepare the terms of reference. But in many cases a conflict isn't going to be solvable and you're going to identify that right from the start. You can't work with the assumption that all projects are going to proceed and be able to go ahead, and this was the case with the Kaministiquia River. If that proponent had known up front before he had invested money — he might not have continued on if he had been told from the minister or the Ministry of Environment and Energy that this conflict can't be resolved, that this is an inappropriate site for the project.

Mr Gravelle: Good afternoon. Thanks very much for coming here. Your presentation in some ways is a perfect ending to the public portion of our committee hearings — I believe it's the last presentation today — because I think you focus in on some of the key areas of concern with this bill. Not to be nasty, but you're quite right, the bumf up front says "improve environmental

protection, increase accountability, enshrine public consultation," but when you study the bill carefully, you recognize that indeed there are various elements in the bill that are going to go in the reverse direction, certainly in terms of the consultation.

Having said that, a number of people, without question the majority of the groups that have come forward that have looked at the bill carefully, have seen the same flaws in the bill. I think we have to be hopeful that the government recognizes these as improvements that need to be made.

Specifically, and this has been a hobby-horse I've been on consistently but I think it's important to talk about it, is the aspect and the value of intervenor funding. I think Friends of the Kam is probably a great example. You've accessed it before in terms of the battles you've been through. I'm sure you can't tell me what you would have done without it because you would have found some way to keep the battle going, there's no doubt about that.

Mr Holenstein: That's right.

Mr Gravelle: I just think it's important to emphasize that without the intervenor funding, a number of interested parties, groups, whatever, would not be able to fight the battles they need to fight or literally make the points they need to. I just want to give you an opportunity to tell us in greater detail why you think intervenor funding is important, not just for yourselves but for the process.

Mr Holenstein: Sure. It's been brought up a number of times that when you're at a grass-roots community group level, the dollars aren't there to hire lawyers, and most of us are aware of the kind of fees that lawyers eat up. If you want an equitable scenario for groups having a discussion at an EA hearing, you definitely need to have a lawyer, you need to hire expert witnesses. We had to do that. We had witnesses flown to Thunder Bay from different areas and we used local witnesses as well.

You can only sell so many pancakes to raise money and this intervenor funding was an important part of the process. To a large extent, I believe that's why we still have a free-flowing river, and it's the last remaining set of rapids on the Kaministiquia River.

Mr Gravelle: If we had time, I'd love to bring you all out there. I'm sure Julian would too.

Mr Galt: Love to go.

Mr Gravelle: We'll go some time.

I guess another aspect of that which is really important too is the whole aspect, again, of public consultation and the case you make, I think quite logically, that by having public consultation up front in the process you can actually have projects, without a great deal of money being spent or a great deal of effort going into it — one can discover that indeed it's not going to go forward. Just turning it into the aspect of a public consultation, it should obviously be made far more clear in the terms of reference.

Mr Holenstein: Sure.

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Mr Gravelle: Because that's a flaw that's been recognized continually, that obviously the public needs to be consulted. By what means do you think they need to be consulted?

Mr Holenstein: As the process continues there is a mechanism for them to be consulted, but it's just too late at that time because the minister has already accepted terms of reference. He should be aware, and he won't be aware when he's looking at the terms of reference prepared by a proponent. If the proponent knows that there are a lot of conflicts out there — and he's likely to be aware of that ahead of time — he's not going to include those in his terms of reference or make those identified to the minister.

Mr Gravelle: Absolutely.

Mr Holenstein: The minister, who may be many miles away from Thunder Bay —

Mr Gravelle: Pretty good chance of that.

Mr Holenstein: — will not be aware of the issues unless it's been brought up during the preparation of the terms of reference and letters have been sent to the minister saying: "Hold on, wait a second. This is a regionally significant site. This is the last stretch of wild water in the Kam river. We have two existing dams there; hydro is being generated; there isn't a need to develop it further; there isn't a demand for that hydro." He could find that out up front during the preparation of the terms of reference, and the proponent could save itself some money by not having to continue down the road hiring consultants.

Mr Gravelle: It's a good argument. It's a good example too, because obviously by including the public in the early part of the process, a lot of damage can actually be avoided.

Mr Holenstein: Yes. That's why I suggest at the end of it that the hearings are an excellent venue, but also if you do a case study of some of these key ones that have happened. You have the one in North Bay that you mentioned that was 13 years. This one was 10 years, which is a long time and it does represent a lot of burnout for community groups. Open that file up at the EA branch. Go through it using this legislation and see where this would improve it — or it might leave it the same. You can't tell until you see those letters, until you see the correspondence that's gone back and forth and see what's gone on behind the scenes.

Mr Gravelle: That's good advice. Thank you very much.

Mrs Boyd: I personally don't believe that people pursue an issue like this for 10 or 13 years unless there's a very serious issue at stake, and it's to the benefit of proponents to try and minimize that and say, "Oh, this is the fault of the process," or "This is the fault of people who are being imported to fight this fight," rather than say, "This is a very serious matter of public interest where the public is disagreeing with a project that could in fact damage the environment of their particular area." I think you're absolutely right.

I think what's being forgotten in this conversation and the ease with which people say the Environmental Assessment Act is broken and needs to be fixed is why it was put in, by a Conservative government, in the first place. It was put in because proponents weren't paying any attention to the environment. There was no mechanism to deal with the public interest and there was a recognition that there was a necessity to try and provide that.

But the changes that are here — first of all, the proponent decides who is interested. Quite frankly, I suggest to you that many times those who are interested find out through intelligence or by accident that somebody is planning something. This gives the opportunity for proponents to set these terms of reference, present the case to the minister, without that initial effort being made. With the lowering of the number of staff in the various ministries that are involved, the minister won't have the benefit of the expert advice within the ministries either, so it's a really serious issue, isn't it?

Mr Holenstein: That's correct. It's a difficult one to alleviate, but perhaps there can be written down clearly in the act ways to initiate public consultation. In some areas there are going to be newspapers. Newspaper ads have been traditionally the venue for notifying people. In some areas there aren't newspapers and then you have to see what other mechanisms are there. But the mechanisms will always be in a community and there should be written out clearly in the act ways to start this public consultation and to start it right from the front, right from the beginning at the terms of reference, because a proponent doesn't want to spend that money early in a process if it's going to be rejected.

You have to realize that you can't start with the premise that everything is going to be approved. There are going to be occasions where projects are inappropriate. In many cases — I'd say the majority — things can be mitigated, there can be compensation, environmental issues can be addressed, but on some occasions the project is not going to be appropriate and there's got to be someone who says no right up front.

Mrs Boyd: If we look at the examples, this idea of limiting the involvement to local people strikes me as very insidious when we think of the kinds of situations, for example, with damming the Columbia River or damming the Red River, the different things that cross lots of boundaries. The local people may be very happy for the construction jobs and the supply jobs for the dam and they may not know what happens to people 200 kilometres down a river.

The people who are the proponents are people who have the advantage, in many cases, of having multinational expertise. They have funding that comes from multinational sources and so on and yet they object to people sharing the concerns of a local affected population.

I suggest to you that you rather easily agreed that things should be limited to people within Ontario, and I don't think that's necessarily a good plan. There are firms that want to operate and have projects in Ontario that have an extraordinarily bad environmental record in other jurisdictions and it should be possible for people from other jurisdictions to have an opportunity to have input on the public interest, given that the environment is not just something that can be walled off.

Mr Holenstein: Sure. That's right.

Mrs Boyd: That kind of expertise ought to be open within this kind of process. So the definition of who would be interested, who the public might be that were interested in a project, I think is extraordinarily important, and that's a major piece that's missing in this amendment to the bill.

Mr Holenstein: That's correct, yes.

Mrs Boyd: I have a sense that the members of the government are very empathetic to the notion of proponents, that the best thing in terms of timeliness and streamlining would be to limit the number of public participations. I suggest we would find ourselves in a similar kind of situation as many other parts of the world if we take that route where the environment as a larger picture as belonging to all of us gets lost in the notion of timeliness and streamlining.

Mr Holenstein: I don't think it's the public consultation that is causing these drawn-out delays.

Mrs Boyd: Exactly.

Mr Holenstein: That's far from the truth. What is causing the delays, and we fully support this after being in a process for 10 years — there have to be some time limits on government review, on how long a project can go on.

In this case for the Kam River, the proponent was playing out the system quite well. He was told to go to an environmental hearing this year. As soon as he was told that, he withdrew it and said he was going to change his company name and submit again. He's done this for 10 years. He did that on the first one. He can play the game, minimal cost. When he changed his project from Kam 1 to Kam 7, he just used white-out to change the things and submitted it. It was accepted for government review.

We can't go on that long. These things have to be addressed and we're looking forward to changes in the EA act. We're looking forward to time lines, but there also has to be public participation. Public participation isn't what's causing it to be drawn out. That can be addressed.

The Acting Chair: Thank you, Mr Holenstein, for your presentation. We appreciate it very much.

Mr Holenstein: Thank you very much for listening.

The Acting Chair: Just a couple of things: The clerk of the hearing has been in touch with legislative counsel and they're doing everything possible to meet the 5 pm deadline tomorrow.

Secondly, the hearing will be adjourned until next Wednesday, August 21, at 10 am.

Thirdly, the shuttle vans will be at the front door. They'll have to make a couple of trips to take us back to the airport.

Fourthly, I want to thank you for your cooperation from all three caucuses.

This meeting stands adjourned.

The committee adjourned at 1529.

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STANDING COMMITTEE ON SOCIAL DEVELOPMENT

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Mr Bruce	Smith (Middlesex PC)
Mr Bud	Wildman (Algoma ND)

**In attendance / présents*

Substitutions present / Membres remplaçants présents:

Mr Doug	Galt (Northumberland PC) for Mrs Johns
Mrs Margaret	Marland (Mississauga South / -Sud) for Mr Jordan
Mr R. Gary	Stewart (Peterborough PC) for Mr Newman
Mr Ed	Doyle (Wentworth East / -Est) for Mr Smith
Mr Marion	Boyd (London Centre / -Centre ND) for Mr Wildman

Clerk / Greffière: Ms Lynn Mellor

Staff / Personnel: Mr Ted Glenn, research officer, Legislative Research Service

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First Session, 36th Parliament

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Official Report of Debates (Hansard)

Tuesday 1 October 1996

Journal des débats (Hansard)

Mardi 1^{er} octobre 1996

Standing committee on social development

Comité permanent des affaires sociales

Environmental Assessment
and Consultation
Improvement Act, 1996

Loi de 1996 améliorant le processus
d'évaluation environnementale
et de consultation publique



Chair: Richard Patten
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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
SOCIAL DEVELOPMENTCOMITÉ PERMANENT DES
AFFAIRES SOCIALES

Tuesday 1 October 1996

Mardi 1^{er} octobre 1996*The committee met at 1532 in room 151.*ENVIRONMENTAL ASSESSMENT
AND CONSULTATION
IMPROVEMENT ACT, 1996LOI DE 1996 AMÉLIORANT LE PROCESSUS
D'ÉVALUATION ENVIRONNEMENTALE
ET DE CONSULTATION PUBLIQUE

Consideration of Bill 76, An Act to improve environmental protection, increase accountability and enshrine public consultation in the Environmental Assessment Act / Projet de loi 76, Loi visant à améliorer la protection de l'environnement, à accroître l'obligation de rendre des comptes et à intégrer la consultation publique à la Loi sur les évaluations environnementales.

The Chair (Mr Richard Patten): Good afternoon, ladies and gentlemen. We're here this afternoon to deal with Bill 76 in terms of clause-by-clause consideration. I look forward to it.

Ms Marilyn Churley (Riverdale): If it's appropriate at this time, I have a motion to make before we begin.

In view of the fact that the Minister of Environment and Energy called for these hearings to be delayed, whereas the government has not changed any amendments and whereas this bill fundamentally breaks the promise of the Premier that guaranteed that all new landfills would be subject to a full EA, I therefore move that the new minister, Mr Sterling, come before committee for clause-by-clause consideration to explain the amendments that stand in his name.

May I speak to this motion now?

The Chair: Yes.

Ms Churley: Shortly after the new minister, Mr Sterling, was appointed he called me, and I believe he also called Mr Dalton McGuinty, the Liberal critic, and asked our permission to delay clause-by-clause on this bill. I said to Mr Sterling at that time, "I welcome an opportunity for you review the bill because there are extreme problems with this bill, including the fact that you may not be aware, Mr Sterling, that if passed as it is, the Premier will have broken a fundamental promise."

Mr Sterling had some time to review this bill and keep to his commitment, when he was first appointed as minister, that the environment was important to this government and to make some substantive changes, at least one or two. He did not do that. Because he's a new minister and was not in the ministry when this was being developed it's very possible, and I like to think it's the fact, that he doesn't know what's happening with this bill. For his benefit as well as for that of environmental protection he should be here for clause-by-clause so that

he will have the benefit of hearing from a few of us who have been on this committee from day one and heard day after day testimony from various committees and groups about the harmful effects of this bill on the environment. I believe we should not go ahead with clause-by-clause unless he is here to answer questions and participate.

The Chair: We have a motion on the floor and we've heard comments. Debate, other reactions, comments?

Mr Dalton McGuinty (Ottawa South): Mr Chair, I intend to support this motion. We're proceeding here on the assumption that the new minister adopts wholeheartedly, holus-bolus, everything that's been put forward to date. I think it'll be helpful to the committee to have an opportunity to meet with the minister, review some of the concerns that have been raised to date and obtain his insight and personal feelings with respect to Bill 76. For those reasons I support the motion.

The Chair: Comment? Debate? There being none —

Mr John Gerretsen (Kingston and The Islands): I think there's unanimous agreement.

Mr Doug Galt (Northumberland): Hardly. I appreciate the comments that have been made by members of both opposition parties. However, the minister did want to review the bill and be comfortable with it, know what was in it, what amendments were being put forth, and he is quite comfortable that the committee proceed with the line-by-line. As the parliamentary assistant for environment I do not support the motion.

The Chair: Any comments? All right. I'll put the question: All in favour of the motion? Against?

Ms Churley: Recorded vote.

Ayes

Churley, Gerretsen, McGuinty.

Nays

Galt, Munro, Pettit, Preston, Ross, Smith, Stewart.

The Chair: The motion is defeated.

We will now begin at section 1. Shall section 1 carry? I believe there are some amendments to the first one from the Liberal Party.

Mr McGuinty: Mr Chair, you're going to notice that a great bulk of these amendments put forward by our party and the third party are identical. I suggest, for purposes of simplicity, that we just alternate in terms of who presents a motion.

The Chair: Can we have an indication of who will be moving this amendment?

Mr McGuinty: I'll start.

The Chair: Okay. Mr McGuinty moves subsection 1(1) of the bill.

Mr McGuinty: I move that the definition of "director" in section 1 of the Environmental Assessment Act, as set out in subsection 1(1) of the bill, be struck out and the following substituted:

"'Director' means an employee of the ministry appointed under section 31.1 to act as a director."

The purpose of this is to ensure that people who are given the power of director under the legislation are employees of the Ministry of Environment. Directors have approval authority under the Bill 76 EA process and therefore shouldn't have other biased involvements in projects which may be part of the EA process. For example, it would be a conflict of interest to allow Ministry of Transportation staff working on ministry highway projects to also be designated as directors for environmental assessment purposes.

Ms Churley: I have a motion that is the same and I support the amendment as stated. As it stands now, it's my understanding that the minister could appoint a member of the Ontario Waste Management Association as a director for the purposes of the act. I think that we need to make this amendment and I believe that this makes eminent sense. It's totally reasonable, and I hope the government members will support it.

Mr McGuinty: Perhaps we could direct a question to the parliamentary assistant or to staff here as to why they would object to this amendment.

The Chair: Your question is to either the parliamentary assistant or staff? If you want to pass it to staff, it's up to you.

1540

Mr Galt: My understanding is that this is making it consistent with other legislation. I don't really have a problem with the way the original amendment has been made. I don't see the real advantage in adding it here. If staff want to make a comment, they're certainly welcome to.

Mr Leo FitzPatrick: The definition provision in section 1 is relatively neutral. The effective provision, if this change were to be made, should be in the effective section, which is section 31.1, much farther on in the bill. There is a Liberal and an NDP motion with respect to that section.

Mr McGuinty: That's what we're starting to debate right now. That's the amendment being debated right now. Is there any particular reason that I'm missing as to why we're now going to broaden the definition of "director" so that it might include somebody outside the ministry?

Mr FitzPatrick: It's dealt with in this way, in this bill, for consistency with the Environmental Protection Act and the Ontario Water Resources Act. The definition in section 1 is simply a cross-reference to the effective section where specific authority would be given, in subsection 31.1(3); with the approval of the Lieutenant Governor in Council such persons are to be appointed as directors. If this kind of change is to be made, that is the more appropriate place to make it.

Mr Peter L. Preston (Brant-Haldimand): Why? If that change is made under section 31.1, what difference does it make if it's made under section 1? I'd like to know.

Mr FitzPatrick: If it's going to be made, it has to be made in section 31.1. It could be made here as well.

Mr Preston: Subsection 31.1(3) says that they are allowed to "appoint persons other than those described in subsection (1)." That won't affect it at all if we change section 1.

Mr FitzPatrick: If you're going to make the change in section 31.1, you don't need to change section 1 at all. Section 1 can be left alone. The question of whether directors can be appointed from outside the ministry can be completely addressed in section 31.1 and cannot be addressed by changing only section 1.

Mr Preston: No, but if section 1 is changed to show that it's only within the ministry —

Mr FitzPatrick: Then we would later have to change section 31.1 to match. We'd have to make two changes rather than one.

Mr McGuinty: My concern is not technically how we do it. I need to know the government's position on this. Are they prepared to accept this amendment, whether we do it here or in section 31.1? Then we can let the lawyers work it out.

Mr Galt: As I am reading this and trying to sort it out, it's already covered under section 31.1 of the act on page 19 of the bill. The modification you're making could be considered under there, but I think it says what you want it to say.

"31.1(1) The ministry may appoint one or more employees in the ministry to act as director under this act."

Isn't that saying what you're trying to say in this amendment?

Mr McGuinty: It would but for sub (3), where the wording in the column says "same," but "not employees."

Mr Galt: Ah.

Ms Churley: That's the problem.

Mr Galt: This, then, could be accepted under section 31.1.

Mr McGuinty: Okay. So what does that mean? Do we have to submit a new amendment?

Mr Galt: I don't think so. Just make sure it's in the right location for clarity.

Mr Chuck Pautler: You have a later amendment to strike 31.1 which will have the effect of the provision —

Mr McGuinty: That takes out sub (3)?

Mr Pautler: Yes.

Mr McGuinty: Perfect. We'll deal with that when we get to it then.

The Chair: Are you prepared to stand down that amendment?

Mr McGuinty: Yes, I am.

The Chair: All right. Are you withdrawing that or postponing it?

Mr Galt: Do you want to postpone it?

Mr McGuinty: Whatever's recommended here, Mr Chair. I guess I should keep this in here until we get to it.

Mr Galt: Just as long as we don't miss it when we get to that point.

The Chair: So we'll stand it down for the moment. I believe we have other amendments under subsection (1) as well.

Mr Galt: I move that subsection 1(3) of the Environmental Assessment Act, as set out in subsection 1(6) of the bill, be struck out and the following substituted:

"Same

"(3) A class may be defined to include or exclude one or more members that would otherwise not be included in or excluded from the class."

The previous word was "undertakings." It's felt that would be more limiting and "members" would be more inclusive and broader.

The Chair: Any comments or questions? I'll call the question. All those in favour? Those opposed? The amendment is passed.

There's another Liberal motion, I believe, Mr McGuinty.

Mr McGuinty: This is identical with the NDP motion.

Ms Churley: We'll present this as an NDP motion. Do I have to read the whole thing into the record? It's quite long.

The Chair: Yes, we do. We have to put it in the record for Hansard.

Mr Gerretsen: We give you the long ones.

Ms Churley: I don't need to read the title over every time. It makes me ill every time I have to read it, Mr Chair.

I move that section 3.1 of the Environmental Assessment Act, as set out in section 2 of the bill, be struck out and the following substituted:

"Harmonization

"3.1(1) This section applies,

"(a) if another jurisdiction imposes requirements with respect to an undertaking to which this act applies; and

"(b) if the requirements imposed by the other jurisdictions are identical to subsection 6.2(2) or have a substantially similar effect.

"Order to vary

"(2) Subject to subsection (3), the minister may by order vary a requirement imposed under this act with respect to the undertaking in order to facilitate the effective operation of the requirements of both jurisdictions.

"Same

"(3) The minister shall not vary or dispense with the requirements of subsection 6.2(2).

"Notice and comment

"When the minister proposes to make an order under this section, the minister shall give adequate public notice of the proposed order and shall ensure that members of the public have an opportunity to comment on it.

"Reasons

"(5) When making an order, the minister shall give written reasons demonstrating that the requirements under the other jurisdiction are identical to subsection 6.2(2) or have a substantially similar effect."

I expressed a great deal of concern about this and so did all of environmental groups that came before us for this reason. It's about harmonization and it has been presented as cutting red tape and overlapping jurisdictional problems. I believe at some times there are problems with that. Without this amendment what happens is that the minister can vary or dispense with parts of the Ontario Environmental Assessment Act to make it

consistent with other jurisdictions. What this means is only one thing, and that's harmonizing to a lower standard. Components of the Ontario EA act should remain consistent. If another jurisdiction wants to meet the Ontario standard, fine, let them harmonize up.

The other problem this amendment fixes is that it requires the minister to give adequate public notice of a proposed harmonization agreement to ensure that the public has an ability to comment on it. One of the issues that's consistently running throughout this bill is that despite everything the government says, that this bill improves public consultation, it actually takes away. This harmonization, because of the possibility in many cases to reach the lowest common denominator, would mean that, whatever happens, at least the public would know what's going on and would have an ability to give their views on it.

1550

I urge the committee to support this. I know not all of you sat through the whole thing, but it was a major issue with many people about the real possibility of Ontario standards being lowered even more. I don't think that's what the minister wants. If it's his intent to actually deal with red tape and overlapping jurisdictional problems, there are ways to do that. My amendment makes it clear that we'll harmonize, but if it's in Ontario then another jurisdiction is going to have to conform to our standards so that we won't have to lower ours.

I think this is eminently reasonable. I believe all members of the Conservative Party have at least said that they want to protect the environment, and this will be a clear message that they're willing to allow Ontario to go to the lowest environmental standards if we proceed the way it is.

Mr McGuinty: I support everything my colleague has said. We're not after the lowest common denominator here. I don't believe that was the minister's intent. I think we're looking for efficiency. Who isn't? I'd ask that the government members, in a true spirit of harmony, concede to this amendment.

Mr Galt: We're in support of harmonization and working together as in the past. There have been projects where they have worked together and it's gone to the highest denominator for whichever particular issue.

This particular motion says "identical," and we really can't support that kind of approach to harmonization, but working together and ensuring that the proponent doesn't have to do it twice, and that can be in the proposed terms of reference when they are submitted. As government, we do not support this particular motion.

We're just doing 3.1(1)(a) and (b)? We're not doing the whole thing at this point? Is that right, Mr Chair?

Ms Churley: I read the whole page.

Mr Galt: You read the whole page?

The Chair: The whole page, yes.

Mr Galt: We can support subsection (4), "Notice and comment," and subsection (5), "Reasons." We're not in a position to support the first part of this motion. We can put forth an amendment to the amendment or we can look at the last two later if you so wish, but we can support (4) and (5).

Ms Churley: I'm happy to split the motion if that would be helpful, so we deal with the first three. I'd like a recorded vote on this.

Mr Galt: Would you like to do the last two first so you get something through?

Ms Churley: Pardon?

Mr Galt: No, I'm teasing.

The Chair: So we will divide off subsections (4) and (5). Unless there are further comments, I will call the question on the amended amendment, which would deal with subsections 3.1(1) through to (3). Ms Churley, you'd like a recorded vote on both sections?

Ms Churley: Actually on the first three.

Ayes

Churley, Gerretsen, McGuinty.

Nays

Galt, Jordan, Munro, Pettit, Preston, Ross, Smith, Stewart.

Mr Galt: I'd like to point out that in subsection (5) the last portion of that does limit scoping. We can support item (5), "When making an order, the minister shall give written reasons."

The Chair: This would mean an amendment to the amendment.

Ms Churley: What are you doing?

Mr Galt: In subsection (5), putting a period after "reasons" and deleting the rest.

The Chair: "When making an order, the minister shall give written reasons."

Clerk of the Committee (Lynn Mellor): So Mr Galt moves that in subsection (5) all the words after the word "reasons" be deleted.

The Chair: We can have comment on that amendment to the amendment first and then vote on it, and then go back to the original. Is there further comment, Ms Churley?

Ms Churley: I'm trying to understand this. We are deleting what after "reasons"?

The Chair: Everything after, "When making an order, the minister shall give written reasons."

Ms Churley: And then nothing else? Can I have an explanation again as to why?

Mr Galt: My understanding is that this would limit scoping. It relates back to the motion that hasn't been carried.

Ms Churley: I'm sorry to do this, but could the staff explain it a little better to me? Sorry, not to insult you, but —

Mr Galt: It wouldn't be the first time.

Ms Churley: He's whispering in your ear. It's just easier and more efficient.

Mr Pautler: The effect of the amendment Dr Galt put on the table would be such that when the minister issues an order to harmonize with another jurisdiction, there would be written reasons provided for that order. The reason the three lines following the word "reasons" are deleted is because they are in reference to the motion above, which was not carried, so they need to be deleted.

Ms Churley: Oh, I see. Okay, gotcha. Sorry.

Mr Pautler: The net effect of both (4) and (5) would be such that when the minister is contemplating harmonizing with another jurisdiction, there would be a public notice given and the public would have an opportunity to comment on the nature of that proposed harmonization.

The Chair: Are we ready to vote? Mr Galt's amendment would be — do you want to read it?

Clerk of the Committee: Mr Galt moves that in subsection (5) all the words after the word "reasons" be deleted.

Mr Galt: Has a motion been put on the table to accept (4) and (5)?

The Chair: Yes. Those in favour? This is in favour of the deletion of that. This is Mr Galt's amendment to the amendment, so this is deleting the second part. I just thought I would point that out.

Mr Preston: We almost got unanimity there.

The Chair: All in favour? Those opposed? Nobody opposed.

Clerk of the Committee: So the question is to subsections (4) and (5) as amended.

The Chair: Right.

Mr Galt: You're doing great. Just keep going.

Ms Churley: The other part is pretty irrelevant anyway.

The Chair: That's right, exactly.

Subsections (4) and (5) as amended — can I call the question on that? All those in favour? Those opposed? Carried.

Mr Gerretsen: It's your amendment.

Ms Churley: No, because he removed part of it.

Mr McGuinty: I have a question with respect to government members. Who can vote here today, including Dr Galt? Can they all vote?

Clerk of the Committee: Mr Galt, Mrs Ross, Mr Stewart, Mr McGuinty, Ms Churley, and after 4 o'clock, Mr Beaubien for Mrs Munro.

Mr McGuinty: Can eight vote on behalf of government? That's what I'm asking.

Clerk of the Committee: Yes.

Mr McGuinty: They can?

Clerk of the Committee: Yes. They have eight members.

Mr McGuinty: You learn something new every day.

Mr Preston: What's the difference between that and four?

Mr McGuinty: Four.

The Chair: I can see our math is very good. So that part has been dealt with.

We have an additional motion from Mr McGuinty or Ms Churley, one of the two.

1600

Mr McGuinty: I move that section 3.2 of the Environmental Assessment Act, as set out in section 2 of the bill, be struck out and the following substituted:

"Declaration

"3.2(1) Subject to subsection (2) and with the approval of the Lieutenant Governor in Council, the minister may by order,

"(a) declare that this act, the regulations or a matter provided for under the act does not apply with respect to a proponent or an undertaking;

"(b) suspend or revoke the declaration;
 "(c) impose conditions on the declaration; or
 "(d) amend or revoke conditions imposed on the declaration.

"Restriction

"(2) The minister may issue a declaration only if,

"(a) the undertaking is not environmentally significant;
 or

"(b) the undertaking is necessary to address an environmental emergency and further delay may result in immediate danger to the health and safety of any person or may result in harm or serious risk of harm to the environment.

"Request for declaration

"(3) Any person may, in writing, ask the minister to issue a declaration with respect to an undertaking and shall give the minister written reasons for the request.

"Notice and comment

"(4) When the minister proposes to issue a declaration, the minister shall give adequate public notice of the proposed declaration and shall ensure that members of the public have an opportunity to comment on it and on any conditions that may be imposed in connection with it.

"Declaration in writing

"(5) A declaration must be made within 120 days after the minister receives the request for it and must set out the minister's reasons for issuing the declaration.

"Duty to monitor

"(6) The minister shall monitor whether conditions imposed in connection with the declaration are being met.

"Compliance order

"(7) The minister may order the proponent of the undertaking to which the declaration applies to comply with the conditions imposed in connection with the declaration or to discontinue the undertaking. The minister may make such an order if he or she considers that the proponent has contravened the conditions or is likely to do so.

"Enforcement

"(8) A certified copy of an order made under subsection (7) may be filed with the Ontario Court (General Division) and thereupon it is enforceable as an order of that court."

The problem here is that Bill 76 allows the Minister of Environment to exempt proponents from the EA process or to change the process requirements for a proponent. This amendment reduces the broad exemption and variance powers in Bill 76 by requiring that the proposal be shown to be not environmentally significant or to be necessary to address an environmental emergency; a proponent give written reasons for requesting a change in the process; the minister provide public notice of the request to change a process; the minister monitor the project to ensure that required conditions are being met; the changes to the process are filed with the Ontario Court to ensure that compliance can be enforced if a proponent tries to change the nature of the project.

Ms Churley: I think I agree with the comments by Mr McGuinty. A major component of this — it keeps a thread throughout the bill as public consultation and public notice and I'd like to emphasize that the adequate public notice of a proposed declaration is extremely

important. Again, I would urge all members of the government to support this amendment.

Mr Galt: Really, we're not changing in this. This is something that the opposition is adding more to the process. It's already been listed in the EBR, and I'll give you the 800 number, if you'd like, Ms Churley. Also, according to some of the figures that I have here, the exemptions have really been very low in recent years, dropping from a number of 51, going back to 1979-80, down to nine in 1993-94 and 12 in 1995-96. It's really not a big issue and it is being put in the EBR and I don't see any reason to be supporting this amendment, so I will not be supporting this amendment.

Mr R. Gary Stewart (Peterborough): I just have a comment. If you look at the proposed new act, I think it clarifies the situation. When I look at the two amendments that we have, first of all, it is so wordy that probably the ministry won't understand it, let alone the public. I think what we're trying to do is streamline the process, get away from regulation that does not pertain to it and allow the minister to have the opportunity to take a look at the situation and what it addresses and the standards etc and to do a declaration if there is a variation from it. I certainly could not support the amendment in any way, shape or form.

The Chair: Further debate? All right, I'll put the question on the amendment to section 3.2 under section 2. Those in favour? Those opposed? The motion has been defeated.

Section 2, as amended, shall it carry? All in favour? Those opposed? Section 2 carries.

We now move to section 3. There are, I believe, amendments to section 3, and it's a government motion.

Mr Galt: I move that subsection 5(3) of the Environmental Assessment Act, as set out in section 3 of the bill, be amended by striking out "or 9.1" at the end.

The Chair: Would you care to comment on that?

Mr Galt: This is a housekeeping amendment which is needed to reflect section reference changes due to later government amendments — basically housekeeping activities.

The Chair: There being no debate, I'll call the question. All those in favour? Those against? The amendment carries.

Are there further amendments?

Mr Galt: I move that section 3 of the bill be amended by adding the following section to the Environmental Assessment Act:

"Obligation to consult

"5.1 When preparing proposed terms of reference and an environmental assessment, the proponent shall consult with such persons as may be interested."

This is the one that both opposition parties have been looking for. It's certainly one that was a loud and clear message on the road. We've heard comments from many of the deputants regarding the importance of consulting the public up front when the terms of reference are being developed. We agree with this suggestion and are proposing this motion.

Proponents will now be required to consult with interested persons on the terms of reference before submitting them to the minister. This is a new require-

ment that is combined with the former requirement in section 6.1 of the bill to consult on environmental assessment. Certainly this is consistent with our intention of enshrining public consultation and will get it up front right at the very beginning in designing the work plan as you may, or terms of reference, and should overcome a lot of the confrontation that has occurred in this process in the past.

Ms Churley: I wholeheartedly support moving forward with an amendment on this. There's no doubt that it was one of the major — I believe everybody commented on that and all but a few found fault with it. I wonder if the government would be willing to — whatever the word is — deal with my motion instead on the same matter, because it addresses the issue much more adequately.

Really, this only deals with it in the simplest form possible, what people said about that lack of access to consultation around the terms of reference. We heard time and time again that there was no definition of "interested parties," for instance. That's not even addressed here. That, among other issues that people responded to about that section, is not included in this. I would say that, although the government has moved a step forward and I applaud the government for doing that, it doesn't adequately address the concerns that many people raised. I wonder if Mr Galt would be willing to remove this motion and support mine instead, because it goes a little further in addressing those concerns.

Mr Galt: I certainly followed Ms Churley's comments and her concerns. I guess I'm one who likes to keep things just as simple as you possibly can. I just find that acts in general tend to turn people off from reading, and we have a very simple statement that's just inviting the public to be involved; it will be a requirement, and if it's not satisfactory, the minister's not going to sign off on it. With this, there's a lot of detail and it's quite cumbersome and I, for one, would just like to leave it in its simplistic, blunt, upfront statement that is easy to read and doesn't go into a lot of detail.

1610

Ms Churley: There's another speaker here if you want him to go before me.

Mr Gerretsen: No, go ahead.

Ms Churley: We've got to just get away from this notion, if we're going to keep hearing this throughout time and time again on these bills, that you just want to keep it as simple as possible, therefore keep as few words on paper as possible, then we've got a real problem here. We're talking about public participation and protection of the environment.

Unfortunately there are times when we have to adequately write out, as governments who have a lot of power to control, very clearly what we mean by our regulations and our laws because people quite frankly can get screwed, as they do time and time again, if the laws and regulations aren't laid out properly. I use a strong word there, perhaps an unparliamentary word, but it's a fact.

I just find the notion that in order to keep things simple, we use as few words as possible — "Ah, don't worry about it. Trust us, trust the government," a government like this one that's dismantling environmental

protection. It's absolutely absurd to say that they don't need to write it in. "Trust us and we'll take care of it. You don't have to worry. We'll make sure that this native band over there is consulted and this group over here and this municipality here." How do we know? We don't.

This is a very important section here, and I'll tell you why. Given the fact that the government has not made an amendment and I am doubting very much from what I've heard that — both the Liberals and the NDP have a motion on a section, and I forget which one it is at the moment, to change the act so that an environmental assessment is assured on landfills, as the Premier promised. I don't think that's going to happen. There's going to be we don't know how many exemptions. We don't know what's going to happen because that section is so loose. The reason people argued so vehemently to at least have a say in the setting of the terms of reference — is that it is going to become so fundamental and so important because it sets the groundwork, it sets the framework for the entire EA, the whole structure of the thing from there on in.

It's very, very important to people that this section be not as simple as possible but as clear as possible. I think mine is pretty clear. The words are pretty small, they're pretty simple. I think anybody, including Dr Galt, can understand it. I don't see any problem. It's just clarifying so that the public has some comfort that they will be included and it's written down in the law that they will be included.

The Chair: Thank you. Mr Gerretsen and then Mr Beaubien after that.

Mr Gerretsen: Certainly the proposed amendments by both the NDP and the Liberals are much more succinct as to who should be consulted and the manner in which consultation should take place. The difficulty I have with the government amendment is that — and maybe Dr Galt has an answer to this — but who actually judges in your amendment whether or not the consultation that's referred to therein has been adequate?

In other words, your amendment basically says, "the proponent shall consult with such persons as may be interested." Who ultimately makes the decision whether or not all of the interested persons have in fact been consulted? Is that the minister?

Mr Galt: There are guidelines already in place to assist the public and proponents to put this in place and then for the terms of reference, when it's submitted to the minister. It's got to be described in there, the kind of public consultation they have gone through and the exercise that they've carried out. Before the minister signs off, they are going to know the kind of public consultation that's gone on.

Mr Gerretsen: The problem I have is that if the minister is going to be the final judge of whether or not in fact consultation has taken place, that isn't the most satisfactory method. I certainly agree with the notion that the kind of consultation that's referred to in the two amendments is much more specific, but I think it should go much further than your amendment suggests, sir.

Mr Galt: If I may, Mr Chair, the minister had far-reaching powers in this particular act in the past and will have in the future and this certainly does not match some

of the other powers that the minister has in this area. It's consistent with how environmental assessment has been handled in the past and will be handled in the future. This has to do with the public being consulted on how the terms of reference will be designed, and there's already a guideline there for it. Maybe there are other members who can —

Mr Gerretsen: But guidelines can be changed on a momentary basis. We're dealing with the act here. If you're trying to improve the process, the improvement should take place in the act and not in some guidelines that can be changed at any time.

The Chair: Mr Beaubien, do you have a comment?

Mr Marcel Beaubien (Lambton): Yes. Thank you, Mr Chairman. Sorry for being the new boy on the block here, but I take strong exception when the member opposite says that this government is trying to dismantle the Environmental Assessment Act. I think that's a totally irresponsible statement. It's incorrect.

For instance, if I look at the motion from the NDP and the Liberals, I don't know who's doing some plagiarism, or maybe it came off the same photocopying machine, but I'd like to know what a "reasonably interested" individual means, especially when the person does not have a "direct personal, pecuniary or proprietary interest in the matter." We talk about confusing people and gobbledegook and grey water and whatever you want to call it. I think if we keep introducing that type of thing, no wonder people are confused today and don't know which end is up and are sick and tired of government and the introduction of bills that you've introduced in the past number of years.

We're trying to clarify the situation: If you're interested, you make an appearance. That covers everybody, whether you have a pecuniary interest or no interest at all.

Ms Churley: I'm not going to bother responding to that because those out there who are watching what this government is doing to dismantle environmental regulations and the cuts know exactly what's happening, and those comments will be viewed with the disdain they're worthy of.

Getting back specifically to this amendment, I'm arguing it because I think it's important to people who came before us. If you will recall, it was an issue. I know not everybody in this room was on the committee at all times, but those who were should remember that it was an issue that came up time and time again. We didn't just make this up. We both consulted — an environmental lawyer on some of these issues, to get the wording right, which you have to do for motions; you can't just put in something that isn't going to work under the law. That's why they're similar. But we listened to the people who came before us, and this is what we were told is important. We're responding to what people said to us is a problem. They're concerned about the fact that it's not clear in here who is to be consulted with, because communities have found in the past that they have been left out, that they haven't been given proper notification, and we were given examples of that.

Interjection.

Ms Churley: Well, this is what people told us. He can't believe it, but this is what we were told time and time again.

I don't know if people have read my wording. It is not gobbledegook. It's very clear, plain language and expresses clearly what people told us they wanted to protect the environment and to protect their communities. That is why this motion has come forward.

Mr Galt: I'm just curious on the comment made by the NDP critic that it's her wording. Is that true, Mr McGuinty?

Ms Churley: That's not what I said.

Mr Galt: Yes, you said it was your wording. I was just wondering if it's her wording or your wording.

Mr McGuinty: It's our wording.

Ms Churley: We consulted with the same lawyer on the wording. I don't think that is the issue at hand here.

Interjections.

Mr Gerretsen: We actually found two lawyers who think alike.

Ms Churley: Boy, you've got great things on your mind today, like who wrote their motions. Congratulations.

The Chair: I think most members would know that the legislative lawyers help in the drafting and therefore intend sometimes is similar.

1620

Mr McGuinty: Just on that point, it's my understanding, and I stand to be corrected on this, that when it comes to committee, amendments are always made by the same legislative draftsman. So I think, first of all, we're dealing with the same legislative mind here.

Second, I'm not sure why it's an issue of any kind.

Third, I know common sense dictates that the fewer words, the less confusion. I can tell you, as somebody who practised law, I wish to God it was that way, but it's not. The fact of the matter is you've got to be specific, and to be specific you've got to use more words. That's just the way it works in law. The more words you have — there's a limit on this stuff, but you can — and remember, you're charged by the word.

I want to support the motion put forward by my colleague the NDP critic for the reasons put forward.

The good news is, and sometimes we lose sight of this, we've got some movement here on the part of the government. They recognize the importance of consultation.

Mr Gerretsen: We can't move them enough, though.

Mr McGuinty: Well, we've got them somewhere. I'd like to move them further. I intend to support their motion, but I want it put on the record that I would prefer that they had gone further.

The Chair: Thank you. Any further comment?

Mr Stewart: Just maybe one comment where you're suggesting the interested parties. I was on the mall so I heard a lot of the comments that were made, and I believe that if you're going to start and do a description of interested parties, is it those with red hair, those with brown hair, those who are fat, those who are slim? It's absolutely ludicrous. If you're interested in the particular process that's being looked at, then I suggest you're an interested party. If you want to have something that's

very wide open, if you look at this amendment number (d), it says "any other process." My goodness, that could mean umpteen things.

I think I made the comment that less words mean less lawyers may be a plus somewhere along the line, but to start and get so descriptive and so implicit on these things, I think you're opening a major, major can of worms that will not solve anything. If you're interested, then I suggest you're interested and you'll be part of the process.

The Chair: All right. Are we prepared to call the question on the amendment, which is section 5.1 of section 3, the motion by Dr Galt?

Ms Churley: Recorded vote.

Mr Gerretsen: It's a government motion?

Mrs Lillian Ross (Hamilton West): Is this the government motion?

The Chair: It's the first one in your book, the one before the amendments by the Liberal Party and yours. It has been read into the record. Unless people would like it to be read again, it already has been and we are now calling the question on this amendment.

Interjection: I think Ms Churley asked for a recorded vote.

The Chair: Recorded vote. Okay.

Ayes

Churley, Galt, Gerretsen, Gravelle, Jordan, McGuinty, Pettit, Ross, Smith, Stewart.

Nays

Beaubien.

Mr Gerretsen: Is Mr Beaubien recorded as opposed? I would like to have this clarified.

Mr Beaubien: I just don't want a recorded vote.

The Chair: That was a recorded vote.

Ms Churley: You have to vote on the amendment.

The Chair: We'll let the record show that he's against the amendment. Mr Beaubien, you're recorded as having voted against the motion. Mr Beaubien now votes in favour.

Mr Beaubien: If you want to force me to vote.

Ms Churley: I voted for this on the assumption, because the Liberal and NDP motion is next, that because we voted for this one and the opposition said that — I mean the government members, who seem like opposition to me all the time; they oppose everything I say —

Mr Gerretsen: They're opposed to most good things.

Ms Churley: — that they will not support my motion on those grounds. So what do we do with mine?

The Chair: Ms Churley, you can move your motion and place it on the record.

Ms Churley: I can still move it? Okay, great.

The Chair: It has not been moved at this point. So we'll take it that the Liberal motion and the NDP motion are from the same drafter; therefore one presentation is required and you will make this presentation. Ms Churley, please.

Ms Churley: I move that part II of the Environmental Assessment Act, as set out in section 3 of the bill, be amended by adding the following section:

"Obligation to consult

"5.1(1) When preparing proposed terms of reference or an environmental assessment, the proponent shall undertake adequate consultation with all persons who are reasonably interested in or affected by any matter arising from the proposed terms of reference or the environmental assessment, whether or not the persons have a direct personal, pecuniary or proprietary interest in the matter.

"Same

"(2) The consultation required by subsection (1) must ensure meaningful public participation in decision-making under this act and it must include, but is not limited to,

"(a) public advisory or liaison committees;

"(b) workshops, open houses, meetings, seminars or focus groups;

"(c) community outreach through media outlets; and

"(d) any other process by which information is conveyed to the public and public input is solicited.

"Funding

"(3) The proponent shall provide funding to the persons described in subsection (1) that is sufficient to facilitate meaningful public participation in the consultations."

I'll speak to it. I just repeat, I know how some of the government members feel about this. They said it before they even read my resolution, I think, because it's very clear after reading this that it's plain language. It's straight up front about who should be included in consultations about protecting the environment.

The Chair: Ms Churley, I'm sorry. I'm advised that this particular motion is out of order now —

Ms Churley: That's what I thought.

The Chair: — having just voted on the amendment on 5.1.

Ms Churley: Well, I read it into the record.

Mr Gerretsen: Just a minute. Why would it be out of order?

The Chair: Because it has been introduced as an amendment to 5.1 and moved and passed.

Mr Gerretsen: But 5.1 is very broad and general.

The Chair: The 5.1 has just been carried.

Mr Gerretsen: But if it's very broad and general, just that "the proponent shall consult with such persons as may be interested," in this particular amendment we're getting more specific.

The Chair: We were dealing with that section and it could have been moved as an amendment to the amendment that was proposed.

Mr Gerretsen: I take your ruling, Mr Chair.

The Chair: Tricky, this stuff. All right. Section 3 now, NDP motion, subsection 6(2)?

Mr Galt: Just for clarification, there was some confusion there and I empathize with the opposition for getting cut off. Perhaps we could have that kind of clarification put up front, because I don't want to play games in getting amendments through. We should all understand. This clarification, I understand why, but I don't want you people to think that we're wedging or trying to play games with it. I want it up front and you have every opportunity to —

Mr Gerretsen: You've been doing that for a year now. What's different now?

Ms Churley: Thank you. We appreciate that.

Mr Galt: However, the ruling came, and probably all of us should have realized it on the ruling, but I'd like to see that ruling up front prior to any of the amendments being voted on.

The Chair: Thank you for your comments. I can't do it beforehand.

Ms Churley: I appreciate Dr Galt's clarification of that. I would like to ask, though, under the rules, with unanimous consent, can my motion be dealt with? Oh, all these people who know their rules here.

Mr Gerretsen: In light of what you've just stated, Dr Galt, surely you'll allow us some debate on this. You want to be fair and reasonable — you just were — and now we're putting that reasonableness to the test.

Ms Churley: That's what I'm asking for, yes.

The Chair: I'm advised that we would have to reopen 5.1, which has just been passed.

Ms Churley: Well, Dr Galt apologized for that and I appreciated his offer, so I can't see why, because we didn't understand the process here —

Mr Galt: He's had his ruling.

Ms Churley: We all thought that —

The Chair: If your request is to open it up, I can put that question.

Ms Churley: Yes. That's the question I'm speaking to now.

The Chair: All right. Is there unanimous consent to reopen 5.1?

Interjections: No.

Ms Churley: Okay.

Mr Gerretsen: It's obvious that Dr Galt is more reasonable than his colleagues.

Ms Churley: How did you vote on this, Dr Galt?

Mr Galt: Did you hear me?

The Chair: All right. We did not have unanimous consent. Can we proceed to subsections 6(2) and (3), NDP motion.

Ms Churley: Or Liberal.

The Chair: Or there's a Liberal motion.

1630

Mr McGuinty: I move that subsections 6(2) and (3) of the Environmental Assessment Act, as set out in section 3 of the bill, be struck out and the following substituted:

"Same

"(2) The proposed terms of reference must indicate how the environmental assessment will meet the requirements set out in subsection 6.2(2).

"Restriction

"(3) The minister shall not approve the proposed terms of reference unless,

"(a) before submitting the proposed terms of reference, the proponent has provided adequate public notice of the proposed terms of reference and has given members of the public an opportunity to comment on them;

"(b) the proposed terms of reference have been reviewed by those ministries and agencies that may have an interest in or be affected by the undertaking;

"(c) an environmental assessment prepared in accordance with them will meet the requirements of subsection 6.2(2)."

What we're after here is that this amendment is going to ensure that a minister will not approve terms of reference for an EA to proceed unless the proponent has consulted with those affected on terms of reference, the terms of reference have been circulated to the affected ministries and the terms of reference follow the general EA procedures laid out in section 6.2(2).

Ms Churley: I'll simply say that we have an identical motion and we'll support it for the same reasons.

Mr Galt: Basically, we're back to trying to keep this simple. We have a motion coming up next in line. Also, the last part removes the minister's ability to scope and that's really part and parcel of what we're trying to accomplish with many of the amendments in this bill. So I will not be supporting this amendment.

Mr Gerretsen: This is more by way of a question. Do I take it that with a lot of these amendments, the government feels that they are simply too specific and that they will tie the minister's hands in dealing with the process here, if all of these various steps have to be followed? Certainly to the general public, it seems to me it's a lot clearer as to what can happen and what should happen.

Mr Galt: It's unfortunate you haven't been able to spend more time with us and understand why — I don't mean that insultingly. What we were hearing a lot on the road was that the problem with the previous Environmental Assessment Act was we'd go through the whole exercise and the whole process, just about get it finished and somebody would come in with another thing that should be looked at, another alternative. Back we'd go through the whole system and 12, 15 years later they were still going.

The whole thrust of what we're doing here is to get the terms of reference or work plan, whatever you'd like to call it, right up front before it's even submitted to the ministry and the minister for their approval. Then, once that's approved, you now have the package. The amendment we just made was to get the public up there as well and get it enshrined that they be consulted in designing those terms of reference. Once that is agreed to by all parties as best as possible, from there on that's the package to be worked on.

Once the minister is satisfied with a particular aspect of that, that can be scoped out and then the rest can be left to be looked at by the board or whoever. You won't have this great, big package always floating around with other things that could be added in. Decide up front, with as many people as possible, what it is you want to accomplish and then go ahead and do it. From that we'll get a quicker yes to the environmentally safe ones and a quicker no to the environmentally unfriendly ones, and get this uncertainty out of people's lives. That, in a nutshell, is what we're trying to do.

Ms Churley: The government motion then: you're saying you have a motion to deal with this.

Mr Galt: Yes.

Ms Churley: And it's following this one? My motions are a bit out of order here.

Mr Galt: Yes, and it really covers some of what you're saying in nice, crisp, clear terms.

Ms Churley: Okay, I see your amendment. I just come back that your amendment doesn't deal with a lot of the

issues and problems that were raised by people. Yes, it could be clear and crisp, but it also could be really abused. I think people do want clarity. I disagree with your premise. It looks nice on paper. Let me remind people that most undertakings don't go through a full EA for a number of reasons. What you like to drag out are the examples of ones that had gone on for 12, 15 years or whatever. There are certain sections of the bill that try to deal with that and this is one, the requirements of the terms of reference, the time frame, trying to cut that down. But I come back again to how important that is to the setting of those terms of reference.

The reason you gave for not supporting this amendment was you say yours is clearer and crisper. I would say yours is unclear, because it isn't more specific and it could be left wide open. That's the big problem. When you're making laws that affect people's lives, you have to be as clear as possible, and if that sometimes gets bogged down, that's far better than having a situation where the government has so much discretion. People need to have very clearly outlined what it is that's happening to them.

Mr Galt: A lot of the problem with developing environmental assessment has to do with one shoe doesn't fit all, or one size doesn't fit all, and up front, when the terms of reference are being made, that's when the specifications — it's going to be well defined for that particular site: jurisdiction, quantity of garbage or kind of incinerator, whatever the issue happens to be — will be decided up front and will be signed off by the minister in due time. That's when the packaging will occur and when the well-defined issues will be included.

The Chair: Further debate? I'll call the question. All those in favour of the section 3, subsections 6(2) and (3) amendment? Those opposed? The amendment is defeated.

Mr Galt: I move that section 6 of the Environmental Assessment Act, as set out in section 3 of the bill, be amended by adding the following subsection:

"Same

"(2.1) The proposed terms of reference must be accompanied by a description of the consultations by the proponent and the results of the consultations."

We've heard comments from many of the deputants regarding the importance of consulting the public up front when the terms of reference are being developed, and we agree with this suggestion and are proposing this motion. The requirement to have a proponent report on the consultations on the terms of reference parallels a reporting requirement on consultations on environmental assessment. These two provisions will strengthen the public's ability to influence the proponent's decision-making. As we were discussing earlier, this is where those kinds of details will be put in, and since one size doesn't fit all, that's part of the reason for environmental assessment and you can be assured that there will be a full environmental assessment on all these issues.

Mr McGuinty: So there is a corresponding obligation with respect to environmental assessment somewhere else in here, right?

Mr Pautler: Yes.

Mr McGuinty: Right, yes, I thought so; I'm just wondering why we're not adding any — is it elsewhere in here?

Mr Pautler: It's in the bill.

Mr McGuinty: Okay, 6.2(2)(c) I think it is, the bottom of page 4.

Mr Pautler: Yes, sir.

Mr McGuinty: That satisfies my concern.

The Chair: Further debate? There being none, I'll call the question on the amendment, subsection 6(2.1). All in favour? Opposed? Carried.

1640

Ms Churley: I move that subsection 6(5) of the Environmental Assessment Act, as set out in section 3 of the bill, be amended by inserting after "notify the proponent" in the first line "and the public."

I have to just look; if anybody can tell me what page that's on quickly — page 4? This comes back to the discussions we've been having throughout this, that notifying the public and the consultation with and public participation is extremely important to the people of Ontario. I don't see any problem at all for the members to support this amendment. It's very short, not very wordy and —

The Chair: Crisp.

Ms Churley: — and crisp, yes, extremely crisp and very important, albeit small, and I hope I can count on your support for this one.

Mr Galt: I can comment on it. Certainly the public are going to be a group and it could be rather difficult to reach all of them. It's going to be on an Environmental Bill of Rights registry and it's going to be in the proponent's terms of reference how the public involved are going to be informed. The addition of this really doesn't gain anything.

Mr McGuinty: I wonder if I could raise an issue. Was it in Chatham we had a professor from the University of Windsor law school who said that putting this on the Environmental Bill of Rights registry was going to call for an amendment to that act? I remember her saying that explicitly.

Mr Jim Jackson: I'm Jim Jackson, Ministry of Environment and Energy, legal services branch. Under subsection 6(2) of the Environmental Bill of Rights, it is possible to put a wide variety of things on the electronic registry that is maintained under that act. No amendment to that act is required to enable those kinds of notices to be put on the registry.

Mr Gerretsen: I am just trying to think through the logic here. We've just passed some amendments that say that in order to draw up the terms of reference, all interested parties will have input into that. Surely to goodness, once you've got the terms of reference, all of the interested parties at least that had some input into drawing up those terms of reference should be notified what the final proposal is going to be.

How can anybody be against that? The way this is written, only the proponent has to be notified of the terms of reference. Why wouldn't the people who had some input into that system have an equal right to know what the terms of reference are? If you don't like the words "and the public," say "and the interested parties that expressed an interest initially." Surely it's a basic premise in everything we do that people who have an input into something are entitled to know what the results of that input are in the long run.

Ms Churley: I would like to think this is more than oversight, in fact that the public has been left out. I come back to your assertion that you're trying to make your government more accountable, which of course I don't agree with, but you can't say that out of two sides of your mouth on this, which you constantly do.

It just belies everything you said and I think it must be an oversight. I wonder if the staff can comment because I don't think your explanation was adequate in terms of why you wouldn't want to notify the public on this.

Mr Galt: I would just like to ask Ms Churley what is meant by "and the public"? How would you go about doing that?

Ms Churley: As I said, a motion of mine was not discussed because your motion passed first, but I believe that the public has to be involved in environmental protection in every possible way we can assist them to be. Earlier I tried to make a motion that would define "interested party," but I would certainly say that it's got to be more than the proponent, that you have to include — I mean, you can define it perhaps — although I would like to see "interested party" defined, maybe we could make a friendly amendment that you would at least include — I would be willing to amend my motion to say, "and interested parties beyond the proponent," because it's not just the proponent who have a great deal of interest in these terms of reference.

Mr Galt: The question was, how would you inform the public — go back to the original bill and "shall do so by the prescribed deadline." How would you physically go about notifying the public? What's your proposal in making it happen out there?

Ms Churley: There are a variety of ways, as a government, that you can alert and prepare the public and give public notice. You mentioned yourself the environmental registry. I don't know if this could be included in that, but there are going to be interested parties declaring themselves up front at the beginning, right? You're going to know, even though you haven't defined who they are. Some members of your own government said, "Gee, when something's happening in their community, they're going to be alerted to the fact that it's happening and either get involved or not get involved," although I disagree. Some people have been shut out and we have given examples of that. On the whole, interested parties do make themselves known. I just don't see a problem with this.

Mr Gerretsen: Just to take it one step further, we have just passed a government amendment that states, "When preparing proposed terms of reference and an environmental assessment, the proponent shall consult with persons that may be interested." So these people have come forward, whoever they are, who may have an interest in the terms of reference. They're now a known quantity, they're a known number, because they have been consulted with respect to putting together the terms of reference. You know who they are, and surely what you can do now is, once the terms of reference have been finalized, you notify these people as to what the results of their input have been.

Mr McGuinty: That calls for a friendly amendment, Dr Galt.

Mr Gerretsen: I realize "the public" is a much larger term than "the interested parties," and you may have some problem with that, so what I'm suggesting is that at least include the interested parties that have had some input into the process.

Mr Galt: As I see it, that would be an automatic thing that would happen and be put in the Environmental Bill of Rights. I have a problem with meeting the required prescribed deadline and informing the public and knowing what that public really would be. The interested parties are already going to be listed. It's going to be in the proponents' proposal. I see that as an automatic thing happening.

Mr Gerretsen: I would move an amendment to this amendment which deletes the words "and the public" and includes the words "and the interested persons as defined or as set out in section 5.1."

Mr McGuinty: Then you're working with a defined quantity. I know that Dr Galt has made reference several times to the fact that you could put it on the registry, but the fact of the matter is that only 30% of Ontario homes have personal computers, and I'm not sure what the number is in terms of how many of those are hooked up to the Internet. So it's not really, to date, an effective means of giving notice to the public. I don't think it's deemed in law yet to mean you put it on the registry and, bingo, that means that everybody is deemed to know what it is.

I think my colleague's friendly amendment makes eminent good sense. "And the public" is too broad, I'll give you that, and we've got to restrict it and use some of the language that has been used earlier in the act.

The Chair: It was moved by Ms Churley. Would you accept that as a friendly amendment to —

Ms Churley: Under the circumstances, yes, I will.

The Chair: It has to be moved as an amendment to the amendment. Do we need any further discussion on that?

Mr Galt: I need clarification on the amendment to the amendment. What's it now? How's it going to be worded?

Mr Gerretsen: Instead of the words "and the public," which is part of the motion, it would read "and the interested persons, as set out in section 5.1," which was the earlier government amendment.

Interjection.

Mr Gerretsen: Oh, okay — "and such persons as may be interested."

Mr McGuinty: "Such persons as may have been consulted," right, because you've got to consult.

Mr Gerretsen: Whatever. I prefer the way I had it before.

The Chair: Would you read the amendment?

Clerk of the Committee: Mr Gerretsen moved an amendment to the amendment that the words "and the public" be deleted and the words "interested persons as set out in section 5.1" be substituted therefor.

The Chair: Any debate?

Mr Bruce Smith (Middlesex): My question's to the parliamentary assistant. Given the language of the section, it refers to prescribed deadlines, notification. Could I conclude from that that there would be regulations

pending on how notification by the minister would occur, and would those regulations potentially address the obligations of a proponent to notify interested parties?

Mr Galt: The difficulty being dealt with is the time period for the minister to deal with it and then to notify, and we're talking a 28-day period. The problem becomes how to notify that possible number of people.

Mr Smith: But would those time frames be dictated by a regulation, and if so, would the notification requirement for interested parties be done through regulation as well? Instead of including an amendment to this section, as suggested by the opposition, I'm inquiring as to whether or not that could be achieved through regulation.

Mr Galt: Could I just have a second to discuss this?

The Chair: Would members like a five-minute recess?

Mr Galt: We'd appreciate that.

The Chair: Why don't we take five minutes and come back at 5 o'clock.

The committee recessed from 1652 to 1659.

The Chair: All right, ladies and gentlemen, we have before us an amendment to the amendment as proposed by Ms Churley, and the amendment to the amendment is by Mr Gerretsen. We have read it. Would you like it read finally to refresh your memory and then we can vote on it, if you wish.

Clerk of the Committee: The amendment to the amendment moved by Mr Gerretsen is that the words "and the public" be deleted and the words "interested persons as set out in section 5.1" be substituted therefor.

Mr Gerretsen: It should say "and interested persons." Legislative counsel agrees.

The Chair: Any further debate? Then I'll call the question. All in favour? Opposed? The amendment to the amendment is lost.

Ms Churley: Can I have unanimous consent to have a government member explain what happened in the last five minutes, why people voted against this now when they seemed to support it before?

Mr Gerretsen: It's taken care of in another area, whatever that means.

Ms Churley: Dr Galt?

Mr Galt: We've voted on it. We don't have to worry about it.

Ms Churley: Okay, fine.

The Chair: Now Ms Churley's amendment, which is subsection 6(5). Is there any further debate? I'll call the question on that. All in favour? Those opposed? The amendment is defeated.

There is a government motion.

Mr Galt: I move that section 6 of the Environmental Assessment Act, as set out in section 3 of the bill, be amended by adding the following subsection:

"Same

"(6) Different deadlines may be prescribed with respect to proposed terms of reference that are referred to mediation and with respect to those that are not."

This amendment provides for a time frame to be set by which the minister must make a decision following the receipt of a mediator's report on the terms of reference. It is expected that the minister's decision time frame would only be extended by the amount of time taken for the mediation. In other words, the 28 days the minister has the minister would still have if there was mediation

in there, so the time clock would stop running during the mediation process.

Ms Churley: I just didn't talk about — sorry, but this was a word used on that side of the House — gobbledegook. I didn't understand and I don't know if it's me. I admit it could be me. It's the end of the day and I'm tired. We have the same situation again where an NDP motion and a Liberal motion to follow are on the same section. So I assume if this motion passes, our motion is then just deleted.

The Chair: Is it dealing with the same subsection?

Ms Churley: Yes, it is.

The Chair: Yes, if it is dealing with the same —

Clerk of the Committee: No, it's not.

Ms Churley: Oh, isn't it? Sorry. I have to admit I have trouble following these sometimes. I thought it was.

The Chair: Yes, it is.

Ms Churley: Section 3 of the bill, subsection 6(6) —

Mr Galt: It's the same subsection but different information.

The Chair: If I could clarify, if there are different motions dealing with the same section or subsection, what have you, but the motion might precede yours, Ms Churley, the best way to proceed would be if it touches on what you propose, you can call for an amendment to the amendment that would put it in line with what you'd like to see happen as we deal with that section. But once we've voted on that section, then that's gone. So we'll have to watch that as we go along. In this case, where it is dealing with the same subsection 6(6), if you wish to influence it, you could make an amendment. Is that fair?

Ms Churley: If I could speak to this, the motion I'm putting forward is on this same section.

I move that section 6 of the Environmental Assessment Act, as set out in section 3 of the bill, be amended by adding the following subsection:

"Effect of approval

"(6) The approval for the proposed terms of reference expires two years after it is issued."

The problem I have with the government motion is that there's the word —

The Chair: Can I add a word of explanation? I was advised by legal counsel.

Ms Churley: Yes, that would be helpful.

The Chair: In this instance you're dealing with a different subject even though it's part of the same subsection. So in that instance, one can add to the other without cancelling it out.

Ms Churley: All right. Because it's a different part of the same section, I could then speak — okay, I see what you mean.

The Chair: You can deal with these two individually without them cancelling each other out, in other words.

Ms Churley: We can deal with them individually? Okay. Let's go back to this one.

Mr McGuinty: I wonder if I could ask for that explanation again as to the intent of the government motion.

The Chair: We're back to your motion, Dr Galt.

Mr McGuinty: I'm just asking for an explanation.

Mr Galt: I did go through an explanation a few minutes ago having to do with the time for mediation being the time out to save the 28 days for the minister to

make his or her decision. It's the purpose of the amendment.

Mr McGuinty: I'm still not clear. So we have terms of reference. There's going to be a deadline, I guess a standard deadline, that's correct, that they're not referred to mediation?

Mr Galt: The intent would be a 28-day deadline.

Mr McGuinty: But if it's referred to mediation, then you are thinking it will require a longer period of time. Is that what you're talking about?

Mr Galt: Equal to the length of the mediation, ie, if the mediation is going to take 15 days and it's laid out that it's 28 days to the minister's decision, then a total of 43 days would be recognized. The minister would still have his or her full 28 days to make the decision.

Mr Gerretsen: It just seems to me that for a government that likes to pride itself on clarity this has got to be one of the most unclear sections I've ever seen. "Different deadlines may be prescribed with respect to proposed terms of reference that are referred to mediation and with respect to those that are not." Why don't you spell it right out there that if there's mediation the length of the mediation will be added on to the standard 28-day appeal period?

Mr Galt: You're not a lawyer.

Mr Gerretsen: This section puts to the test everything that you've said before about trying to clarify this matter. This is gobbledegook, Mr Galt.

Ms Churley: I understand this to mean that — I see the intent; it just doesn't go far enough. For instance, it says "Different deadlines may be prescribed." But that doesn't mean that it will be and I think that should be tightened up, strengthened, to guarantee that it will be. You could do nothing for years the way it's written now, and then proceed with the undertaking and circumstances could change. I think that's the problem with this, it's hard to understand, but also my reading of it is that's what it means. Talking about clarity for people down the road, even if you understand what's written here, it just doesn't go far enough and you could have a situation where circumstances could have changed so drastically that it doesn't mean anything any more. So that's my concern with that section.

Mr Galt: Just for a little clarity on this, in reference to "Different deadlines may be prescribed," if you just simply say the mediation time in there, it could be a complication whereby it's going to mediation within a day or two of the final deadline. The minister may need a few extra days when he gets the mediator's report to make the final decision, so that does give a little bit of flexibility so there might be a little more than the 28 days or the X number of days for the minister —

Mr Gerretsen: More discretionary powers.

Mr Galt: A little bit of discretion there, yes.

The Chair: Any further debate? I call the question. All in favour? Opposed? The motion is carried.

Mr McGuinty, I believe, and Ms Churley. Who's on deck here?

Ms Churley: We're losing track here. Who's on deck?

The Chair: I think it's his.

1710

Mr McGuinty: Sub (6) is what we're talking about, Mr Chair?

The Chair: Yes.

Ms Churley: It's the same section.

Mr McGuinty: I move that section 6 of the Environmental Assessment Act, as set out in section 3 of the bill, be amended by adding the following subsection:

"Effect of approval

"(6) The approval for the proposed terms of reference expires two years after it is issued."

What we're addressing here is effectively the shelf life of terms of reference. This is to ensure the proponents don't sit on approved terms of reference for a project while over time the need for the project changes. For example, you could have terms of reference regarding the review of a landfill site which may no longer be relevant five years from now. We're just saying: "Listen, two years is the deadline. That's the shelf life of terms of reference once approved."

The Chair: Ms Churley, would you like to make comments?

Ms Churley: Yes, I would agree with the comments of my Liberal colleague. Given that we have the same motion and we're putting forward the same motion here, I —

Mr Gerretsen: It's a most reasonable request.

Ms Churley: It is a most reasonable request, yes.

Mr Galt: The thinking here would be that we're putting a deadline on the shelf life of the particular project. I can certainly follow the thinking of the opposition in bringing this forward so it doesn't sit around forever, but again one size doesn't necessarily fit all. Some projects may take several seasons to be able to get together the environmental information necessary.

This would have to be in the proponent's proposal up front and the terms of reference as to how long they are going to allow themselves to work with it. The two-year time frame might screen out some major projects. If they're existing or happening, they might have to go through the exercise again on two occasions just to get there. We see the shelf life as part of the proposal, the terms of reference, the work plan, however you want to describe it, put right up front and it would be all part and parcel. It would not go on forever.

Mr McGuinty: So the terms of reference itself would contain an expiry date?

Mr Galt: Yes.

Mr Gerretsen: Which could be more than two years.

Mr Galt: Yes.

Mr Gerretsen: In other words, you're in favour of delaying the process?

Mr Galt: No.

Mr Gerretsen: It sounds that way to me.

Mr Galt: In a large project it may be necessary. In a minor project let's have it shorter than the two years — six months, a year, whatever.

Mr Gerretsen: How could we gain?

Ms Churley: Yes, that would be my question. Given that because of the concerns raised — and I'm sorry, I didn't hear what Mr McGuinty was saying. I was looking at another motion. It seems to me that it ties in with my comments that I spoke to earlier, that circumstances really change and it's important to have this two-year deadline there. I'm just not sure if I understood your

explanation about the terms of reference. The terms of reference will have in each case deadlines attached?

Mr Galt: That is expected, yes.

Ms Churley: So you're saying this doesn't need it.

Mr Galt: That's right, yes. We follow your thinking and we don't want it sitting on the books and wandering around for the 12 or 15 years that we've experienced in the past. I have some empathy with the concern you're putting forward. However, I do have some concerns over major projects being put on the books or trying to operate and develop and being locked into the two-year time frame that you're putting into the legislation.

Mr Pautler: If I could add to Dr Galt's response, some of the larger-scale undertakings that are subject to the act can require field work to validate the information and to determine the impacts in the environmental assessment, and oftentimes that field work can take more than 12 months or 24 months to validate.

I think it would be a mistake to put a shelf life into the legislation itself. It's much more appropriate to force the proponent to come forward with an appropriate shelf life given the scale and the consequences of the kind of project they intend to bring forward. In that way we don't screen out projects or automatically put a roadblock in this act so that large projects can't meet the conditions of it. We'd be very concerned technically if this kind of shelf life were built into the statute itself.

Mr Gerretsen: On the other hand, new information could come to light in a matter of two years, so it wouldn't make sense if the terms of reference are to be altered. We're finding out new things about the environment all the time and how to deal with it and different problems that arise, and to just take that completely out of it and allow the terms of reference to go on indefinitely when there may be newer methodology or newer information available as to how to deal with the situation doesn't make any sense to me at all.

Mr Preston: What criteria did the movers use to come up with two years?

Mr Gerretsen: Well, it's better than indefinitely. We want to get on with things. You people want to delay them.

Mr Preston: No. The government says they could put in the terms, anywhere from six months to five years, depending on the project. That means they've looked at the criteria to set the date, and your criterion is better than nothing.

Ms Churley: I think that's a good question. It's been a while since we dealt with these resolutions and motions, as you know. I suggest that we stand this one down, if you don't mind. I think you asked a good question and I feel that I have to go back and look at this a little more carefully in light of what Dr Galt said about how this is being dealt with throughout the terms of reference.

The Chair: Do we have agreement for postponing this motion?

Ms Churley: Until tomorrow?

Mr Galt: Sure.

The Chair: All right. This motion is postponed. There is another motion. Ms Churley, do you want to handle this one?

Ms Churley: I move that section 6 of the Environmental Assessment Act, as set out in section 3 of the bill, be amended by adding the following subsection:

"Modifications

"(7) The minister may approve modifications to approved terms of reference,

"(a) if the proponent has provided adequate public notice of the proposed modifications and has given members of the public an opportunity to comment on them; and

"(b) if the modifications are necessary in light of changed circumstances, new technology, new alternatives, new information about environmental impacts or other relevant considerations."

This comes back to the issue of public participation and the issue that we were just talking about: changed circumstances. Again I say to government members, in terms of ensuring that the public is given adequate public notice on all aspects of any environmental assessment process, I think it's fundamental to the integrity of the process. There absolutely have to be some modifications to be dealt with, as we all know, and we're hopeful there will be even new environmental technology that will improve conditions that exist now. We know that circumstances can change drastically over a short time. So I believe that we need these modifications to make sure that a public notice is absolutely crucial in this. I hope that the government members will support this motion of public notice and public participation.

The Chair: Mr McGuinty, do you have anything to add? Some comments?

Mr McGuinty: I think it's in keeping with the position taken by the government so far today. If there's going to be genuine consultation required in connection with the terms of reference, there ought to be consultation required with respect to changes to approved terms of reference. They seem to go hand in hand.

Mr Galt: The difficulty is that it will put us right back to where the old act had us. You could work your way through and somebody would come up with a new idea, a new technology, and back to the beginning you would go. That is part of what we were attempting to do with this bill, in changing the act, that everything would be put up front, signed off by the proponents and those they're consulting with and then the minister, and from there on you have your package to work on and there are not going to be any surprises later on.

Major projects may take a lengthy time, as we were discussing earlier. Technology does change, but the proponents and the public and the minister know about a lot of activities going on in the field of research, and that can be included in it. With a reasonable time frame to get an environmental assessment completed, there shouldn't be that many surprises and new technology coming through.

1720

Mr McGuinty: We're talking about changing the agreement. There's been an agreement, if I can call it that loosely. The public has been involved. They helped lend shape to it, and suddenly we're saying it's okay to change it and the public need not be involved. It doesn't strike me as fair.

Ms Churley: Why would you shut the public out again, Dr Galt?

Mr Galt: I fail to follow the question. We've enshrined the public in two specific areas to be very thorough with them. I don't follow your question that we're shutting them out. We're being very thorough, giving them every opportunity. However, we don't want to go partway through and then get a surprise and have them go back to the beginning and work their way through again. A very small project would soon be up to the two-year limit you had placed on it to begin with.

Ms Churley: Dr Galt, if I could follow up, you're saying that if the public are given notice of modifications, they may hold the thing up. Does it not occur to you that perhaps they will have very legitimate concerns that, if not taken into account, could at the end of the day have profound adverse effects on the environment? We have examples of that. We heard some from citizens' groups who came to speak to us. If it weren't for citizens just being dogged and persistent and at the end of the day turning out to be right, with a great deal of difficulty, I believe the opposite of what you said, that there's a very delicate balance here. If you don't put these modifications in you've weighted it more to the proponent, and if problems emerge, citizens, particularly people who can be directly affected by these changes, should know about them and be given the opportunity to comment.

The Chair: I remind members that when addressing another member of the committee, if you wouldn't mind please addressing them by way of the Chair.

Ms Churley: Thank you.

Mr Gerretsen: This goes right to the heart of public consultation. If you consult the public, if you believe in consulting the public at the outset, surely to goodness you have to consult them throughout the process, and if there are significant modifications or changes to be made, the public ought to be reconsulted. If you don't believe in that, I'm afraid you're just paying lip-service to the notion of public consultation. That's the bottom line. If there are significant changes, there ought to be reconsultation because that may very well change the whole nature of the project, the whole nature of the process or procedures that you're involved in. Through you, Mr Chair, of course.

Mr Galt: In response to that, I hear them saying the status quo is satisfactory because that's what has been going on. I make reference to Peterborough county trying for 12 or 15 years to get a landfill site through mainly because of the kind of thing they're describing.

We're saying, and we've put forth the amendment that's been passed, that we will enshrine public consultation up front in the designing of the terms of reference. It's not just the public that are going to be involved in that; the proponent, the ministry and all ministry staff that have anything to do with environmental assessment would be involved in it, and I hope that group of people would know about most of the things that should be examined during the environmental assessment.

Once that package is signed and they understand what the work plan is going to be they work towards that, going through the environmental assessment process and coming up with a final package. So we're consulting at

both levels. When we're developing the environmental assessment we're not now saying to the public, "Is there something else you can dream up that you would like us to go back and look at?" We already have that package and we're working through it step by step to get it. In the past, once the proponent got all finished and went to present it, somebody would come along and say, "By the way, you forgot to look at frogs in the pond," or something.

Mr Gerretsen: Just a minute, now. Mr Chairman —

Ms Churley: There might be more who think that.

The Chair: Dr Galt has the floor.

Mr Galt: The problem is that they come along with another example or something to look at and the decision just never gets made; it goes on and on until the example like in Peterborough: 12, 15 years and you still don't have a landfill site. Maybe the people there, arms flailing, would like to keep their garbage in their apartments and save it going to a landfill site when you can't get one for 12 to 15 years.

Mr Gerretsen: That is not what this amendment is addressing. I certainly agree with you that the process has to be speeded up if we're talking about the total process. This amendment says, "The minister may approve modifications to approved terms of reference," so we're talking about terms of reference that were approved at one time with public input. If you allow the public to have a say in coming up with the original terms of reference, I assume that if the minister modifies those terms of reference there's a good reason for his or her doing so.

Surely to goodness the public at that point has a right to know why those terms of reference are being changed and should have the same kind of input they had before. That doesn't delay the process; it just gives public consultation its right and meaningful place in the process.

Ms Churley: We can go round and round on this one, and part of the discussion on this bill is the public consultation and participation. This is another example of the public being shut out of a very key part of the process. My position on Dr Galt's comment, "The public could come back and say that the frogs are dying in the pond" — I know he threw it out as an example — is that if frogs are dying in a pond and the studies around looking at why frogs are dying in a pond are not part of the original terms of reference and modifications are being made, that's why public participation is so important.

Not all proponents are bad, but remember that we've been given very clear-cut examples of situations where communities have not been given the opportunity to be fully involved for a variety of reasons and a proponent with big bucks has had scientific studies done — I'm trying to remember one biggie; I'm just tired and I can't think of it — where groundwater would have been contaminated, drinking water for a whole town, had the citizens not been persistent in demanding certain studies and looking at various aspects that had been okayed by the proponent.

We have to look at citizens as not just impediments. We know there have been really long hearings, and there's an agreement that there had to be some ways to

streamline some of that, but what I hear time and time again is, "Where possible, let's shut out the public; we'll deal with the proponent." This is a blatant case of the public being frozen out, and they may have some important points to make.

That's another aspect. We shouldn't laugh at the suggestion that citizens might come back and bring up the fact that frogs are dying in the pond, "Therefore we can't go ahead with this now." I think we'd have to look at why the frogs are dying, because they may be drinking that water. I think Dr Galt unwittingly brought up a very good reason why in fact citizens should be involved in hearing about modifications to a terms of reference plan. 1730

Mr McGuinty: The argument made by Dr Galt, I'm not sure — with all due respect, he was making reference to what the intent of this amendment is. What we're after here, Dr Galt, is to ensure that once the terms of reference are approved, once the working plan — I think you called it earlier a working plan. Once the proponent decides they're going to change it, I think the public ought to be reinvented again. That's all we're talking about.

Mr Gerretsen: That's all we're saying.

Mr McGuinty: Fine. Let's get us involved at the outset. You've come up with a plan, fine, but then the proponent says, "I want to change it." This isn't the public that's offering to change it now, it's the proponent that's initiating a change or perhaps ministry staff that's initiating a change. We're saying, "Well, now go back to the public."

The Chair: Mr Stewart and Mr Preston.

Mr Stewart: Mainly because the Peterborough landfill etc was brought up, I cannot not comment on it. What the opposition is talking about is what delayed the process on getting a Peterborough landfill for probably some eight to 10 years, because every time there was a slight change, you went back and you started all over again. I suggest to you that the type of amendment that is being proposed here is exactly the same type of act we've been dealing with for the last 10 years that hasn't worked. What we're trying to do here is to streamline it. We have got the terms of reference, let's get on with addressing them, not change them and start all over again like we've had to do for the last 10 years.

A perfect example is what's happened in Peterborough county and Kingston and to Carleton, all of them, because the minute the terms of reference were changed, you start all over again. As you know, the criteria over the last five or six years have been changed — actually the last 10 years have been changed half a dozen times and what's been approved? Nothing. Why don't we streamline it, get on with the job, have the public input, which there are all kinds of now on this, and get on with the job? I think this type of an amendment is redundant.

The Chair: Mr Preston was next, then Mr Gerretsen.

Mr Preston: Streamlining the process — I have half a dozen in my area that are held up because every time there is a change, the whole list of individuals gets back on the bandwagon again. On the other side of the coin, what my question really is, how can we be sure that we incorporate any new changes, any new evidence without

having to go back and start the process all over again? That is the big crunch, isn't it?

Everybody wants to make sure we're doing the right thing, but every time we dot an i or add a period to something, we've got to go right the way back and start with 200 people who want to fight the project, the "not in my backyard" syndrome.

The Chair: Dr Galt, did you want to respond to that question?

Mr Galt: I was just simply going to make reference — in my comments earlier I was purely commenting on public and some new technology or something, but right in (a) it does refer to proponent, and essentially if some new technology comes along that's significant, this is exactly how it would happen anyway. That would be in the terms of reference as to how it's going to follow through, as I understand it.

On a technical point, if we could refer it to Mr Jim Jackson, maybe he can help to clarify some of the problems we're having here in clarity in understanding this.

Mr Jackson: If new information came up that required a change that was outside of the scope of the terms of reference, the proponent would propose new terms of reference which would reflect such of the old terms of reference and the work done under them as work going to be changed, as well as the new provisions and those new proposed terms of reference would be processed under the provisions we've just been dealing with. There would be notice to the public; they would get to make submissions; the minister would get to make a decision and approve the new terms of reference.

I think I've addressed the other point about how you incorporate it without going back to square one. The new terms of reference would say what you have to go back and do, so it wouldn't have to open up the whole field right back to square one.

Mr Gerretsen: First of all, in understanding the comments of Mr Stewart and Mr Preston, it almost seems as if the public is somehow a hindrance to the whole process.

I'm not totally familiar with the Peterborough situation but I can certainly tell you what the Kingston situation is. This is perhaps not going to make me very popular with some of the politicians in Kingston. I wouldn't for a moment suggest that the 10-year delay there has anything to do with the public; maybe it has more to do with the politicians, that they're simply not willing to make the decisions at the appropriate time.

To make a general statement that just because there's been a change in the terms of reference or a change in the way things are done etc, now, unfortunately, 200 members of the public should all be given an opportunity here — first of all, it can be limited to just the changes that are being dealt with at that time. Any new public input can be strictly limited to the changes that are being proposed in the terms of reference.

Second, I think an awful lot of the delays that have taken place in the province are not just because special interest groups are involved; they are because of delays by proponents, by politicians and by all of the people involved in the process. The moment we stop scape-

goating one particular group of individuals or members of the general public, I think we'll probably be a heck of a lot better off. Maybe there's a little bit of blame to be shared by all of the people involved in the process.

Mr McGuinty: Mr Jackson, I'm just wondering, is there anything in here in black and white that confirms what you've told us? I don't doubt you for a moment, but just to lend some comfort to me, is there something in here that says, "If we're going to change these things, you've got to start over from square one"? That's basically what you're saying.

Mr Jackson: There's no authority to change them, so what happens is the proponent stops acting under his existing terms of reference and submits and gets approved new terms of reference that can reflect all of the valuable stuff that the proponent and the public consultation had already produced, together with the change. It's like starting from scratch except that the instructions in the terms of reference will, in effect, bring forward whatever was still valuable from the previous terms of reference and the work done under them.

Mr McGuinty: So nowhere in here is the minister given authority to amend approved terms of reference.

Mr Jackson: That's correct.

Mr Stewart: I just want to clarify one thing. I did not say for one moment that the public or the special interest groups were holding up this process. What I said was that government over the last eight or 10 years has changed criteria every two or three years, which meant you had to go back to square one and start all over again.

If you're worried about new technology, if we continue to arrive at landfills like we have in the past — technology does change a bit over 10 or 12 years. What we're suggesting here is, let's get on with the job under good terms of reference and, yes, if there is new technology, it will happen when they're already started.

The Chair: Further debate? Any further questions?

Mr Galt: If we're making clarifications at this point, I referred to a frog, not frogs dying.

Mr Gerretsen: You mean the government is not in favour of frogs dying?

Mr Galt: That was the response.

The Chair: I'll call the question on the amendment. All those in favour of the amendment? Those opposed? The amendment is lost.

A government motion.

Mr Galt: I move that section 6.1 of the Environmental Assessment Act, as set out in section 3 of the bill, be struck out.

This section is replaced by an earlier amendment in section 5.1. It's basically that of housekeeping.

The Chair: The explanation is housekeeping.

1740

Ms Churley: Not quite, because what I'd like to do, because I know it's — no, never mind, it's struck out. Never mind; I pass. I wanted to make a comment about interested parties again, but since it's been struck out — obviously it has to be because we've adopted another section, so never mind.

The Chair: Further comment or debate? All in favour of the motion? Opposed? The motion is carried.

All right, I think we'd better move to the next motion, quickly.

Mr McGuinty: I move that part II of the Environmental Assessment Act, as set out in section 3 of the bill, be amended by adding the following section (after section 6.1):

"Referendum re waste

"6.1.1.(1) This section applies with respect to an undertaking that involves the transfer of waste from one county or from one regional, metropolitan or district municipality to another.

"Same

"(2) No application for approval to proceed with the undertaking shall be approved unless,

"(a) the county or other municipality to which the waste is to be transferred holds a referendum to determine whether its residents agree with the proposal to transfer the waste; and

"(b) a majority of residents voting in the referendum agree with the proposal.

"Same

"(3) The proponent shall not submit an environmental assessment for the undertaking until before the requirement for a referendum is met."

What we're talking about here is this notion of a willing host. I can recall debate in this Legislature some three or four years ago when this was a very contentious issue in the greater Toronto area, the time when they were trying to site new landfill sites here. The resolution that was put forward was debated at some length and supported by the now Premier and I counted five or six members of the now cabinet. In essence, what we're saying is you cannot send waste into a community that doesn't want to take it. That's all we're saying here. This requires that there be a referendum held.

This is in keeping with the government's tendency right now, its attraction to referendums or referenda, whatever the heck it is. This is an opportunity to give the public a say in whether or not they want to take — let's say we want to ship the garbage up — this is hardly speculation here — ship Metro garbage up north to an open-pit mine. The community has to be involved in deciding this, and the government members, particularly five or six now cabinet ministers — they weren't then — argued vociferously, compellingly, eloquently, forcefully that we should not be allowed to send garbage into a community unless we had their consent. That's all this is doing.

Ms Churley: The whole issue around willing hosts is really complex, because I recall when I was on Toronto city council there would sometimes be an issue with the various communities saying their councillor did not support the majority of the community's position and would argue back that — and I did say it gets very complex because, of course, you can argue that we elect our politicians to represent us and if we don't like what they're doing, they can throw us out. But it does get complex because people do say the council voted on this and took a position which a whole bunch of us don't agree with. I think in the Kirkland Lake situation, am I not correct that a referendum was held? Do you know?

Mr McGuinty: The referendum was held. I think one of the issues is who ought to have been included in that.

Ms Churley: Yes, and that became an issue because there was a referendum in the Kirkland Lake area and those people who would be most directly affected had not been included in that. We haven't had this debate in the House yet, and I'm looking forward to it, around referendums, because I have very mixed feelings about it and I think there are some occasions where it's a good idea to determine a community's position in this way. I believe in the area of waste management that Kirkland Lake is an example where it didn't work.

I'm not sure I'm thinking through this because of my contradictory positions on referendums overall. I'm not sure if the willing host concept is one that is easily defined because, say, sometimes it's in the interests of a council, for a variety of reasons — money for the town, a special relationship with the proponent, whatever — to vote a particular way. You see what I'm saying here. I know where Mr McGuinty is coming from on how to resolve this, but I have reservations about this whole willing host concept and how in the world you end up at the end of the day being able to define what's acceptable. I assume, if I could ask a question on the motion, that when you talk about the residents you would suggest that there would be some kind of regulations around — I get back to this subject of who these residents are, how that would be defined, whose vote would be consulted and whose wouldn't be.

Mr McGuinty: Yes. The amendment may be primitive in some ways, but the intention is this — and the government members have to make a decision here. If they're going to put a dump in your riding, should your constituents have the opportunity to vote on that? I'm talking about a big dump, a major dump. Should your constituents have an opportunity to vote on that? This says they ought to have that opportunity. It was a very contentious issue during the NDP government, I can tell you. This was a big issue.

Mr Preston: When you talk about a big dump, a mega-dump, then there's good reason for this, but way back in history I started a landfill site for Grimsby, Lincoln and the surrounding area and it was very successful. If Grimsby had had to go through a referendum, I think the cost would have blown that thing, just the cost of the referendum to take into our landfill site the garbage which came from Smithville, all around the Grimsby area.

Mr McGuinty: What if we want to send Metro garbage to Grimsby?

Mr Preston: We've got signs up in Cayuga saying "No Toronto Trash Allowed Here" — that refers to your garbage — because they tried to open up a large site there. Consequently, it was knocked out. I'm confident that we would not have had a favourable result in a referendum, but the pressure on the council prevented the site from opening, and I think that's sufficient. The pressure on your individual councillor is sufficient to prevent a site from accepting, or to allow a site to accept, outside waste.

Ms Churley: I think that at the end of the day I'm going to support this resolution, although I have some

misgivings about the primitive way it was written. I'm just using your word, and "primitive" probably isn't correct anyway. It just needs more meat on it. I'd be very interested to see how government members are going to vote on this, given that there is going to be a bill in front of us. Has it been introduced yet?

Mr McGuinty: I don't think so.

Interjection: On what?

Ms Churley: On referendums. We had the announcement today in the House that the redistribution is going to happen and many seats are going to be lost. We believe the purpose of this government is to suggest that there be more direct governance now, fewer politicians, to save money and that there will be more referendums. We'll see what happens with this bill. I suppose it's like the Hydro hearings on privatization. We haven't got a commitment from the government yet to allow a referendum on that. I assume all members in this committee would vote for this and would support this resolution today given that this is the direction their government is going, notwithstanding that it's expensive to hold referendums. We have to think very carefully about how often we allow issues to be resolved by referendum, because I think it is going down a very dangerous path, with fewer politicians, that could end up costing far more money in the long run.

Mr Preston: It's governing by consensus.

Ms Churley: I think one has to draw that balance there. I'm going to watch with interest to see how government members vote on this resolution today.

Mr Galt: Just a few comments in reference to this: The thought on referendum is commendable, particularly when the government plans to bring in a bill on referendums. We walk a fine line between putting out regulations for municipalities and how council should function and also having them be autonomous and function on their own without a lot of interference from Big Brother, so to speak. Hopefully when this referendum bill gets in place there will be a provision in it whereby the public can force a referendum — that's part of what referendums in many other countries are — and therefore it would be possible for the public, with X percentage of the population, to force one.

The proponent also can put forth the idea of having a referendum, which would be commendable on the part of the proponent, and in that way would also be paying for it. As set up currently, as mentioned earlier, referendums are very expensive to carry out unless we have a standing voters' list. I, for one, would be supportive of that and making referendums more available and easier to take place in the future. I have a little difficulty with having it legislated in hard, cold fact every time you want to move some garbage from one municipality to another.

I'd have to ask the question, what would happen with cover for a landfill site that you've sorted out, and landfill mining? You have a beautiful pile sitting here. It has maybe a few nails in it or a bit of broken glass, but it would be great for covering another landfill site. Is that going to prohibit you from moving that fill that's a little bit contaminated over to another landfill site to be used as cover? I see some complications. Would that require a referendum?

It's commendable, the thought, in this particular instance, but when you get right down to it it's difficult for me to support it.

Mr McGuinty: Just to remind government members, I'd never heard of this notion of a willing host until I got here in 1990. It was something that was talked about at great length, particularly by the member for Nipissing, now the Premier. He said, "There's no way on God's earth" — this is hardly a direct quote — "we're ever going to impose a dump in any community that is not deemed to be a willing host." We talked about this notion of a referendum. Anyway, that was then and this is now.

The Chair: Mr Preston, would you like to have the floor?

Mr Preston: Yes, please. What allows anybody to put garbage in somebody else's backyard now? If a garbage truck comes up to my municipal dump, my dump manager says, "You're not allowed in here." If they continue he calls the police, complains to council and council says, "Don't bring your garbage into our dump." Isn't that the way it works? Good, that's the way it works.

The Chair: Are we ready to call the question? Those in favour of the motion? Those opposed? The motion is lost.

I understand that there's a vote in the House at 6. Being three minutes to 6, may I suggest that we adjourn today. We would resume next Monday at 3:30.

The committee adjourned at 1755.

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Substitutions present / Membres remplaçants présents:

Mrs Lillian Ross (Hamilton West / -Ouest PC) for Hon Janet Ecker
Mr Doug Galt (Northumberland PC) for Mrs Johns
Mr Dalton McGuinty (Ottawa South / -Sud L) for Mr Kennedy
Ms Marilyn Churley (Riverdale ND) for Ms Lankin
Mr Marcel Beaubien (Lambton PC) for Mrs Munro
Mr R. Gary Stewart (Peterborough PC) for Mr Newman

Also taking part / Autres participants et participantes:

Mr Leo FitzPatrick, counsel, legal services branch, MOEE
Mr Jim Jackson, director, legal services branch, MOEE
Mr Chuck Pautler, director, environmental assessment branch, MOEE

Clerk / Greffière: Ms Lynn Mellor

Staff / Personnel: Ms Laura Hopkins, legislative counsel

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ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
SOCIAL DEVELOPMENTCOMITÉ PERMANENT DES
AFFAIRES SOCIALES

Monday 7 October 1996

Lundi 7 octobre 1996

*The committee met at 1535 in room 151.*ENVIRONMENTAL ASSESSMENT
AND CONSULTATION
IMPROVEMENT ACT, 1996LOI DE 1996 AMÉLIORANT LE PROCESSUS
D'ÉVALUATION ENVIRONNEMENTALE
ET DE CONSULTATION PUBLIQUE

Consideration of Bill 76, An Act to improve environmental protection, increase accountability and enshrine public consultation in the Environmental Assessment Act / Projet de loi 76, Loi visant à améliorer la protection de l'environnement, à accroître l'obligation de rendre des comptes et à intégrer la consultation publique à la Loi sur les évaluations environnementales.

The Chair (Mr Richard Patten): Ladies and gentlemen, we are ready to reconvene clause-by-clause of Bill 76. I need to inform you that in your new package here subsection 7.2(3) should actually follow subsections 7(2) to (6).

Subsection (3) of the bill, subsection 6(6), was removed from the table for consideration for today. Have you had a chance to think about it?

Mr Dalton McGuinty (Ottawa South): I just spoke with Ms Churley about it. I gather it was stood down. As I recollect, I made some argument in favour of this one. I'd just like to vote on it, if we could, and then move on.

The Chair: Does everyone have that? It should be the second sheet in, the page which is section 3 of the bill, subsection 6(6).

Ms Marilyn Churley (Riverdale): Mr Chair, we have discussed it. I did look into it. I still don't support it for the reasons I mentioned last week, but I'm ready to vote on it now. I'll just vote against the government motion.

The Chair: All right. Is there any further discussion on it, or would you like to vote on it?

Mr McGuinty: We'll vote on the Liberal motion first.

The Chair: Yes.

Ms Churley: Oh, the Liberal motion. So what happens? Was the government motion on the same section already voted on then?

The Chair: Yes.

Ms Churley: Oh, it was. All right, I'm ready to vote on this.

The Chair: Are we ready for the vote? All in favour? Those opposed? The motion is defeated.

Mr McGuinty: If I might, I know this is slightly out of order, but there has been one amendment that has aroused some considerable interest, if I could put it that way. I want to make an inquiry now with the parliamentary assistant to see if there are going to be any further

amendments on it, because one of the things we're looking at here now is some of the time constraints we are going to be operating under. This will be one that will deserve some attention, and that is the amendment which is section 3 of the bill, part II.2. I am just wondering, is that it or does the government intend to introduce anything further? That will be the subject of discussion today? Nothing further to be added to that?

Mr Doug Galt (Northumberland): That's the intent. It will be introduced today as printed in the last printing.

Mr McGuinty: All right. Thank you.

Ms Churley: Another question, because that is fairly far into the paper, I believe. There's an agreement that we'll try to finish today, although it was my understanding that when we made the agreement it was two full days. It was during the summer, and of course the hours are curtailed quite considerably with the House in session. I just wanted to make sure. I am willing to go quickly through some of these amendments, but I also want to make sure we can debate substantive ones — I forget which section it is now Mr McGuinty mentioned — fully. What happens?

The Chair: Mr Galt, would you like to comment on this?

Mr Galt: Yes, no problem in stopping and debating at any point, but it would be nice if we could complete today.

Ms Churley: My question was, what happens if we've made an agreement that we're supposed to finish today and we haven't gotten through all of the amendments and the substantive ones in particular, like that one we want to make sure we get to debate?

The Chair: My understanding was that the House leaders were to meet on this and provide some interpretation of what is meant in terms of two days. I checked that and we have not received word yet. It would have to be a motion from the House. Mr Galt, would you like to comment on that?

Mr Galt: I don't really have anything to comment on since I gather the House leaders have not met. I can be flexible. However, there are some time commitments that various people around the table have and I have myself. Certainly I would like to get this wound up as early as possible this week. Tomorrow's not a favourable day, but maybe there's another day this week we could look at.

The Chair: All right. If there is no decision from the House leaders, then we continue until we finish. That's the procedure.

Mr Galt: Are you referring to this evening or another day?

The Chair: No, I'm talking about another day.

Mr McGuinty: I'm not clear. If we haven't come to the end of our amendments, dealing with those today, then we are deemed automatically to be going into another day? If we don't finish by the end of today, then we can take it for granted that we will be given further time, or do we have to put forward a motion on that?

The Chair: Yes, unless there is a motion from the House stating otherwise.

Mr Galt: There cannot be an unlimited length of time. We agreed to two days. If we have to go into a third day, that would be the maximum. I'll request a vote if that's necessary. We did agree to two days. Yes, I appreciate the days are shorter than originally agreed to, but to go beyond a third day, no.

Mr McGuinty: I would think we could do it in three days too.

The Chair: Fine. Good. I'll take that as an attempt to move ahead and work within those time frames.

We finished off at section 3 of the bill, subsection 6.2(2) of the act. There were Liberal and, I believe, NDP motions. I forget which one was taking a lead on this.

Ms Churley: I'll be happy, in the interests of time, to move it.

I move that subsection 6.2(2) of the Environmental Assessment Act, as set out in section 3 of the bill, be amended by adding the following clauses:

"(c.1) a description of the net or residual effects after mitigation measures are applied;

"(c.2) a description of an appropriate level of compliance and effects and of the monitoring of and reporting on effectiveness."

This amendment is there to add to the existing requirements that the terms of reference have to consider. It would include, obviously, better environmental planning and protection. The proponent would be forced to describe the residual effects after the mitigation measures are put in place. The requirement of the level of compliance is extremely important, particularly in view of the cut-backs and the staff cuts, which in the interests of time I won't go into detail on again now. But there is real concern about compliance. I hope the government members will support this because it simply makes sure there is better, wider environmental protection included at the stage of the terms of reference.

Mr McGuinty: I agree.

Mr Galt: We're not in favour of this amendment.

The Chair: Are you ready for the question?

Ms Churley: Very quickly, I'd like to know why not.

Mr Galt: We can walk through some of the reasons.

Current practice requires the proponent to determine the net effects in order to evaluate the advantages and disadvantages to the environment. That is presently required. Since this is currently practised, this motion is really redundant. Monitoring is addressed in any environmental assessments and regularly included in terms and conditions of approval. Therefore, this is also redundant.

Ms Churley: It's not redundant; it strengthens it. None the less, I'm ready to vote on this.

The Chair: All in favour of the motion? Those opposed? The motion is defeated.

The next motion is section 3 of the bill, subsection 6.2(3), a Liberal-NDP motion again.

Mr McGuinty: I move that subsection 6.2(3) of the Environmental Assessment Act, as set out in section 3 of the bill, be struck out.

I cannot overemphasize the importance of this one. Right now, 6.2(3), as found within the bill, allows the minister to exempt a proponent from following the comprehensive EA review criteria set out earlier in section 6.2. Subsection 6.2(3) leaves a loophole so big you could drive a Mack truck through it.

The intention of the Premier all along has been to ensure that, especially when it came to dumps, landfill sites, there would be an obligation from which a proponent would not be relieved, and that would be that they continue to meet all the obligations imposed on them under the existing legislation to explore all alternative sites and means by which they might deal with the waste. That is a commitment that had been made by the Premier in the House. I don't have a copy of my question that I asked of him on a certain day, but he committed to ensuring that it would be a full environmental assessment. Perhaps my colleague has that. That commitment has been made. It was delivered in the House. This is a very important amendment. With this we will enable the Premier to live up to his word, so I'm making every effort to ensure that the Premier is not embarrassed. That's why I've kindly put forward this amendment.

Ms Churley: This to me is the central focus and the biggest problem with this bill, and I am going to take a few minutes on this one. I know, for the record, I've attempted to convince government members, although I see there are some people who weren't with us throughout the whole committee, who might be interested to hear that if this bill passes without this particular section being removed, the Premier will have broken a major promise that he made time and time again.

I have some quotes here that I'm going to read to you from the Hansard record: "Recent legislative debates regarding the Waste Management Act, Bill 143, the GTA landfills and the Interim Waste Authority are replete" — I'm reading this from the Canadian Environmental Law Association's document, and I thank them for the work they did. They wrote a letter to the Premier making it very clear, on an analysis, that if this section is not removed, it breaks a really fundamental promise that the environmental community was very pleased to see the Premier make.

I'll read to you what the Premier said on one occasion in opposition, when he was the leader of the third party: "Why did the minister dismiss the Kirkland Lake proposal out of hand, without examining the merits and without permitting a full environmental assessment...on that proposal?" That's Hansard, June 27, 1991. "Under the existing Environmental Assessment Act, all alternatives must be considered when establishing a waste disposal site. Her proposed legislation," — here he's referring to the Honourable Ruth Grier at the time — "as I understand it, steamrollers over this provision by excluding the Britannia, Keele Valley and Durham sites from this process." "Can the minister tell me why the most effective way of managing the environment in the short term is to say: 'It's my way or the high way. You can no longer consider the best environmental alternative. In fact,

you must not take the time to find the best answer for the environment. You must do it my way'? Can she tell me how, in the short term, expressly telling people, 'Don't look for the best solution,' is good for the environment?' Mike Harris said that as the leader of the third party.

Later as Premier of the province, when asked by my colleague Dalton McGuinty, who is the Liberal environment critic, "My question, Premier: Do you still, today, believe that Ontario's dumps ought to be the subject of full and public hearings under the Environmental Assessment Act?" the Honourable Michael D. Harris, Premier, said, "Yes, I do." "In spite of the fact that we felt the previous government was proceeding in error with the mega-dump proposal, at least they were having full environmental assessment, not trying to short-circuit the process, not going without any full environmental assessment." This is what Premier Harris said in the House very recently.

It's right here in writing and it's going to come back to haunt this government time and time again because it is a very significant broken promise. When municipalities across the province start doing their work under the new legislation this is going to come back to haunt the government. I'll explain what's going to happen as a result of this one little subsection 6.2(3). During the terms of reference it allows individual proponents to negotiate off the table key elements of what environmental assessment is all about. Looking at alternatives to the site and need is the heart and soul of environmental assessment. If that can be negotiated off the table, and looking at alternatives, particularly when you have, supposing, a big incinerator proponent coming forward wanting to build an incinerator, that wasn't allowed under our government. There were complaints from the Tories saying that wasn't fair, I believe even from some Liberals — it's true — saying we should at least be able to look at it.

1550

This government has put it back on the table. I thought, when it was put back on the table, that there would be full EA required. It gave me some comfort, when the Premier said he believes in full environmental assessment, that at least it would be looked at from all aspects. Now we know that somebody can come forward with a proposal for an incinerator and not have to look at alternatives to the undertaking, which is a very serious problem when you're looking at incineration, which burns up a lot of the same material that you use in the 3Rs, particularly since our NDP government, when it was in power, worked with pulp and paper mills up north which have retooled a lot of their plants to use recycled material and some of them have been concerned about the new incineration, the ability to look at that as an option. Given that a proponent could end up not even having to look at that as an option and the implications to not looking at that are very serious indeed.

The last thing I'd say about this is that it doesn't do what the government said it wanted to do. It doesn't create certainty at all. Each and every proponent will be able to sit down and negotiate those components during the terms of reference stage off the table. So for each and every one there'll be questions around: "Did this proponent give the government money during the election

campaign? Oh, isn't that interesting. Did this one? No, they didn't, and they're not getting the same treatment as the other one."

It opens the government up, and I'm not saying the government would do that in this form — spare me; I'll be careful here — but even if they didn't, there would be the perception of that. It puts the government in a very vulnerable position to be able to have that kind of discrepancy during that stage. I think the government would want to make sure that is very clear. It's a matter of debating not what is on the table but how these components are going to be looked at. I don't know.

I expect that the government members think this is not a big deal, that there's still an EA, and as I pointed out many times before, a lot of these big projects don't even go before a full EA if things can be worked out in advance. We hear all the horror stories about long EAs, but we do know once we have an environmental assessment, once one is put in place, there's good reason for it. There's a lot of controversy around it, and it is absolutely essential to people to have these components there, and people want the certainty. I would say the community wants the certainty and that the proponent would like to know with certainty what they're going to have to look at. I think this is a big mistake and that — I saw Mr Fox winking here. I don't know what he meant by that.

The Chair: I was greeting him and he just winked in acknowledging my welcoming him to the committee.

Ms Churley: Is that how you usually greet?

The Chair: No, I just nodded.

Interjections.

Ms Churley: Oh, he's the one who winked. That's right.

Getting back to the subject, I think it is going to come back to haunt the government members that the Premier will have broken a substantive promise he made time and time again. I would suggest that the members of the government vote for this amendment today.

Mr Galt: It's obvious, according to the debate and rhetoric that have gone on so far in this amendment, that a mistake was made by suggesting we might have extra time. I can assure Ms Churley that this bill provides for a full environmental assessment; it provides for the opportunity to look at all reasonable alternatives.

This clause is required to ensure that the proponents, in consultation with the public and government agencies, are able to focus on environmental assessments, on environmentally significant issues and on a project-by-project basis. We are trying to get away from these encyclopaedic and costly EAs that don't necessarily contribute to good environmental protection. Certainly stakeholders will be consulted on the development of the terms of reference by the proponent and the minister will seek input prior to approval. This clause also allows for more information than that already provided in 6.2(2).

Mr McGuinty: The concern I have is that there is no limitation whatsoever placed on the discretionary power provided to the minister under 6.2(3). I have a question for the parliamentary assistant: What assurance can you provide me that the minister would make only reasonable use of this, assuming that there is such a thing? And second, a specific example of where you would feel a

proponent would not have to comply with the usual obligations regarding environmental assessment.

Mr Galt: For example, if you were doing an environmental assessment for the purpose of putting in a subway, why would you have to do an alternative to look at something like a superhighway to go over top or a railroad track to go over top when the intent is a subway? Our concern is all about protection of the environment, not looking at things that are really not reasonable alternatives. When you look at things that are agreed to, that's really what the scoping is about. When there's a consensus and people agree, why take all that to the hearing? That's really what this is about, rather than looking at these monstrous stacks of paper that have been going on in the past which has been extremely costly to citizens and to the public in general.

Mr McGuinty: Even with respect to that example I would think there ought to be some thought given to an alternative: From an environmental perspective, which is the most suitable way to move people back and forth? Consideration ought to be given to other forms of transportation.

I don't see a limitation of any kind whatsoever on the minister. The minister might say, when you take a look at 6.2(2) here: "We don't need the rationale. We don't need a description. We don't need to know about the effects. We don't need to know about any efforts made to mitigate." Am I missing something here or does this not give a blanket authority to the minister to cherry-pick or indeed waive all the obligations, just from a legal perspective?

Mr Leo FitzPatrick: Certainly the subsection as drafted would allow for variations, but in all, Dr Galt has described the process that would be used in focusing the terms of reference on those matters of environmental concern related to the undertaking. The process always has to be carried on within the overall framework of the purpose of the act. That is what would ensure that the terms of reference stay consistent with our goals of environmental protection.

Mr McGuinty: You're telling me there's something else in the bill that somehow limits the scope of the subsection?

Mr FitzPatrick: The purpose of the act as it has always been and remains unchanged.

Ms Churley: The issue remains that despite what you say, the elements of EA can be negotiated off the table during the terms of reference. I'd like to say to Dr Galt, the parliamentary assistant, as I've said time and time again, that for me this is the crux of the whole bill. If I spend a little bit more time on this, you'll forgive me, but I've expressed that this, in my view, is ripping the heart and soul out of the bill. I'm not asking a question at the moment, but just to explain. If this goes, the rest of the stuff is relevant, but to me this is the most important aspect of this bill that's being changed. So yes, even if at the end of the day it's just for the record, it's very important that we debate this. This is our last opportunity in this committee.

1600

Having said that, just so you understand, I will not be doing this on every amendment. We'll be here for weeks

if I do and I have other things to do as well. But I want to read to you from the document by Philip Byer, the past chair of the Environmental Assessment Advisory Committee, who is one of the people who spent a number of years looking at reforms for EA. Our government made just some administrative changes, which surely, I agree, weren't enough. Some substantive changes need to be made.

Dr Byer — I think he's here — did say he congratulated the government on having the courage to move forward and make some changes, but one of the areas he pointed out — and every other environmental group and community group that came forward that has had experience with EA said the same thing — is that this was, if not their biggest concern, one of the biggest concerns. What Dr Byer says is:

"I fully support the concept of terms of reference that will help focus and direct the attention of the proponent and public. However, there are fundamental problems with the way the current bill establishes the terms of reference. These are critical since the terms of reference are the most important part in the revised EA process; they set the scope of all that follows."

Then he says, "Under sections 6(2)(b) and (c) and 6.2(3), the government or the proponent can develop binding terms of reference that ignore necessary elements of an EA (set out in section 6.2(2), including alternatives and key elements of the environment set out in the definition in section 1)."

He says later on, "The bill must be amended to ensure that any approved terms of reference are consistent with the intent of 6.2(2) and the full definition of the environment."

Dr Byer's mandate was to find ways to speed up the process and scope it and he came forward with a document that he presented to us at the committee that did that in ways that did not take this very important element — in fact what defines EA as we know it — out. I think he's given evidence in the document the committee wrote that it can be done in a variety of ways, so I think it's making a mistake, when you have a group of people who've worked for years and who know EA inside out, not following their direction on this.

I just don't buy the argument on this. I think there are other ways to scope and time frames and all kinds of things in place that could do that without taking away that essential element. What you're doing is destroying EA. That's what it does.

The Chair: Further comments or debate? There being none, are you ready for the question?

Mr McGuinty: Recorded vote.

Ayes

Churley, McGuinty.

Nays

Doyle, Fox, Galt, Jordan, Pettit, Preston, Smith.

The Chair: That is defeated. Government motion, section 3.

Mr Galt: I move that subsection 6.3(1) of the Environmental Assessment Act, as set out in section 3 of the bill, be struck out and the following substituted:

"Submission of environmental assessment

"(1) The proponent shall submit an environmental assessment for an undertaking to the ministry."

This is the notice to municipalities as provided for in the next government motion.

The Chair: Could you clarify that again, which amendment?

Mr Galt: Do you want the motion read again?

The Chair: No. Just the first line.

Mr Galt: Okay. Under subsection 6.3(1), "The proponent shall submit an environmental assessment for an undertaking to the ministry."

The Chair: Any comments, Dr Galt?

Mr Galt: Just simply that notice to municipalities is actually provided for in the next government motion.

Ms Churley: Just because the next government motion deals with it, and I haven't figured out the difference, can we talk about the next motion in this context since they're related?

The Chair: Would you like to ask the parliamentary assistant to comment?

Ms Churley: Yes.

Mr Galt: Just to ensure that both the public and the municipal clerk are informed at the same time is the end result.

Ms Churley: Oh, I see.

The Chair: That's the next one. Do you have any comments on this motion, Ms Churley?

Ms Churley: No.

The Chair: Mr McGuinty?

Mr McGuinty: No.

The Chair: Other members? I'll put the question. Those in favour? Those opposed? The motion passes. Next government motion.

Mr Galt: I move that section 6.4 of the Environmental Assessment Act, as set out in section 3 of the bill, be amended by adding the following subsection.

"Notice to clerk of a municipality

"(2.1) The proponent shall give the information contained in the public notice to the clerk of each municipality in which the undertaking is to be carried out and shall do so by the deadline for giving the public notice."

This really again is back to the comment made earlier. This ensures that the municipal clerk will get useful information at the same time as the public. This provision for notice to municipalities parallels the notice in subsection 6.4(2).

The Chair: Debate? No debate. I'll put the question. Those in favour? Those opposed? The motion is carried. Liberal motion, Mr McGuinty.

Mr Ed Doyle (Wentworth East): This is the one that we've moved.

The Chair: Oh, this is the one that was moved. I'm sorry. All right. Actually, there are two then. Ms Churley, do you want to take this one? It's similar.

Ms Churley: Which one is it?

Clerk of the Committee (Ms Lynn Mellor): Subsections 7(2) to (6).

Mr Peter L. Preston (Brant-Haldimand): Is that a government motion?

Clerk of the Committee: Subsection 7.2(3) follows this one.

Ms Churley: Can you tell me again exactly what number it is?

The Chair: Subsections 7(2) to (6).

Mr Doyle: There are four pages and 7.2(3) will go after the four pages.

Ms Churley: Right. What about this one?

Clerk of the Committee: Subsection 7.2(3) follows.

1610

Ms Churley: Thank you very much. We're moving a very long motion here.

I move that subsections 7(2) to (6) of the Environmental Assessment Act, as set out in section 3 of the bill, be struck out and the following substituted:

"Same

"(2) The ministry review must be conducted by an integrated interagency review team which shall report to the director whether,

"(a) the proponent has met the requirements of the act; and

"(b) the environmental assessment meets the requirements of subsection 6.2(2).

"Deadline

"(3) The review must be completed by the prescribed deadline which shall be not later than 90 days after the environmental assessment is submitted to the ministry.

"Deficient environmental assessment

"(4) If, after considering the report of the review team, the director considers that the environmental assessment is deficient, the director shall so notify the proponent in writing and with reasons and shall do so by the prescribed deadline.

"Statement

"(5) Within 14 days after receiving the notice, the proponent shall give the director a written statement of whether the proponent intends to remedy the deficiencies and, if the proponent intends to do so, indicating how the proponent intends to do so.

"Rejection of environmental assessment

"(6) The minister shall reject an environmental assessment if the proponent does not remedy the deficiencies within 45 days after receiving the notice. The minister shall give the proponent written notice of the rejection together with reasons."

I would just say that 90 days in subsection (3) is a more reasonable time frame to complete the prescribed deadline. It's just too short. In the interests of time, I will just say here on this one to use your common sense. It's just more reasonable time frames in these very complex situations where, let's face it, I think there'll be very shoddy work done if the time frames aren't lengthened.

The Chair: Mr McGuinty, do you have any comment?

Mr McGuinty: Just to add one further thing that the amendment does: The bill as it stands provides, quite rightly, for the director reviewing an environmental assessment. The possibility is that he or she is going to find it to be deficient in relation to the approved terms of reference or the purposes of the act. So then the director can turn to the proponent and say, "Listen, you've got so many days to clean it up," but subsection 7(6) says that "The minister may reject the environmental assessment if the director is not satisfied that the deficiencies have been remedied...." I think if the minister has determined that

there have been significant deficiencies, he or she ought to be required to reject the environmental assessment rather than "may" reject the assessment. That's the other thing that this amendment does which I think is important: It mandates, requires, that the minister reject a deficient EA.

Ms Churley: Just again quickly, if I could add to that, it continues to inform people throughout the process — the community, the affected parties — what's happening.

Mr Galt: Certainly they're addressing time frames and essentially doubling the time frames that we'd planned to put in regulations and have circulated. That sort of defeats the intent of what's trying to be accomplished by making this more timely and bringing certainty into the system. There's also the formation of an interagency review team; that's normal practice now. With the introduction of approved terms of reference, there should be very few deficiencies in the EAs that are submitted. The purpose of the deficiency statement and the seven days for proponents to respond is to get at glaring omissions or frivolous EA applications early. Fundamental flaws in the EA should mean that the proponent goes back and spends the time needed to fix the EA before submitting it and wasting everyone's time.

We really don't want to be in charge of the process. That's not the intent of this new bill.

The Chair: Other comments? All right. I'll pose the question. Those in favour of the motion? Those opposed? The motion is defeated.

Next is a government motion.

Mr Galt: I move that subsection 7.2(3) of the Environmental Assessment Act, as set out in section 3 of the bill, be struck out and the following substituted:

"Request for hearing

"(3) Any person may request that the minister refer the proponent's application or a matter that relates to it to the board for hearing and decision.

"Same

"(4) A request under subsection (3) must be made in writing to the ministry before the deadline for submitting comments on the review."

This provision allows any person to request the minister to have a hearing on the entire EA application or specific matters of concern to the requester. This is certainly consistent for the scoping of board hearings.

Ms Churley: Just a question: It looks to me as if it's been split. Is it being split into two here?

Mr Galt: Yes.

Ms Churley: Why is that?

Mr FitzPatrick: You'll see in some of the later government motions that there will be, if the motions go through, a clear distinction between the minister sending an entire matter to the board for its decision and the minister referring only a specific portion of the decision to the board for it to have a hearing about. This parallels that in that it allows a member of the public to request a hearing on everything or a hearing only on matters that the person considers are contentious.

Ms Churley: Under the present EA, how does that work? Who decides? Is it the minister or the board? How is it decided now, what is heard, what comes under a hearing?

Mr FitzPatrick: Under the present system a person can request a hearing, which will be the entire matter, and it is the entire matter that is referred to the board if a hearing is to be held.

Ms Churley: Why is this done? What was wrong with that method?

Mr FitzPatrick: It's being proposed so that matters that are not contentious need not be addressed at a hearing. Specific matters of concern can be referred to the board and the board will deal only with those matters and come to a decision.

Ms Churley: Who decides that?

Mr FitzPatrick: The minister.

Ms Churley: That means the board is shut out; the minister makes a decision about what can or cannot be heard, and even if the board feels that there are matters that should be heard, it means that if they are directed to do it this way, they have to do it this way.

Mr FitzPatrick: That's correct.

Ms Churley: I have a problem with that. I think an independent board should be making decisions around what's being heard at a hearing, not the minister.

The Chair: Any other comments? Hearing none, I'll put the question. Those in favour of the motion? Those opposed? The motion is carried.

Next, an NDP motion. Ms Churley.

Ms Churley: I believe I did the last one. Dalton, you're on.

Mr McQuinty: I move that subsections 8(1) and (2) of the Environmental Assessment Act, as set out in section 3 of the bill, be struck out and the following substituted:

"Mediation

"(1) In this section, 'mediation' includes conciliation, facilitation, arbitration and other forms of alternative dispute resolution.

"Appointment of mediators

"(2) At any stage of the decision-making process under this act, the minister may appoint one or more persons to undertake mediation in relation to a matter in dispute or a concern."

What we're doing here is trying to ensure that a mediation process can occur at any stage in the process, as opposed to the later stages which are defined in Bill 76.

The Chair: Other comments?

Ms Churley: Just that we have the same motion, and I support it for the same reasons. It strengthens the section.

Mr McQuinty: I might ask, Mr Chair — maybe Dr Galt was going to respond — why does it not make good sense to allow for the mediation process to occur at any stage?

Mr Galt: I'll walk through a few different things here. One, when we talk about mediation, to me it's an informal, broad, open type of thing that can be looked at. Certainly "mediation" is a word that is accepted throughout the mediation industry and could mean any one of the words that you have listed in the motion. I suggest that maybe the wording in the motion is too prescriptive and might even limit mediation by putting that in there.

Also, the bill enables a minister to send an issue to mediation at any time, and we believe it's quite important that mediation could be entered into at any point in the discussions on terms of reference and all the way through in developing that.

1620

Mr McGuinty: Isn't that what my amendment is doing, though? First of all with respect to the definition of "mediation," we've kept it very broad so that it includes "and other forms of alternative dispute resolution." It's not exclusive; it's inclusive. I think what you're arguing for is the same thing I am arguing for: that a mediation process ought to be able to be started at any particular time.

Mr Galt: If I may, under item (1), adding all the other verbiage is really redundant. It's being said by the term "mediation." The second part, under subsection 8(1), "Before the application is decided, the minister may appoint one or more persons to act as mediators who shall endeavour to resolve such matters as may be identified by the minister as being in dispute or of concern in connection with the undertaking," in the present bill there is no limitation as to when it might be sent or not sent, so it's wide open that it can be sent at any time during the process.

Ms Churley: That is perhaps open to interpretation. I'm just trying to read it again. It says:

"Before the application is decided, the minister may appoint one or more persons to act as mediators who shall endeavour to resolve such matters as may be identified by the minister as being in dispute or of concern in connection with the undertaking.

"The minister may appoint the board to act as mediator."

It says there, "Before the application is decided." It's very clear in what this amendment is saying. Let's make it really clear. It's not just before the application is decided; it's during the whole process.

The second part is that it's not who the mediators could be. It doesn't preclude the board; it just adds more flexibility. I think it just strengthens what you have, because if your intent is what you said, that it could happen throughout — this says, "Before the application is decided, the minister may appoint" — doesn't that clarify it? You look puzzled.

Mr Galt: It's just referring to "Before the application is decided." That's the very end result, the end process, so everything before that makes it totally wide open.

Ms Churley: I guess I misunderstood that, "Before the application is decided."

Mr Galt: That decision is a final decision.

Ms Churley: The final decision made.

Mr Galt: Yes.

The Chair: Any further debate? Okay. I call the question. Those in favour of the motion? Those opposed? The motion is defeated.

Section 3, subsection 8(9), government motion.

Mr Galt: I move that subsection 8(9) of the Environmental Assessment Act, as set out in section 3 of the bill, be struck out and the following substituted:

"Disclosure

"(9) The minister shall make the report public promptly after the minister makes his or her decision under

section 10 or the decision of the board under section 9 becomes effective. The minister may make all or part of the report public before then only with the consent of the parties to the mediation."

We've heard many comments during the course of the hearings regarding the need for mediation to be carried out without prejudice to the parties. Mediation is an important mechanism for ensuring timely and cost-effective issues resolution at all stages of the process. We agree and are proposing this amendment.

This provision provides that a mediation can be conducted without prejudice to the parties. The mediator's report will only be released after an approval or rejection decision has been made, or earlier, but only with consent of the parties to the mediation.

Mr McGuinty: The word "promptly": Ministers have been known to sit on these things for some time. What does "promptly" mean? What's the legal definition of "promptly"? At what point can you say, "This was prompt; that was not prompt?"

Mr Galt: I would have to turn to legal counsel for an interpretation of "promptly."

Ms Churley: This should be good.

Mr FitzPatrick: I don't know if I can give you a firm legal definition of this. All it is intended to do is allow time, once the decision has been made, for whatever necessary administrative processes are gone through to make the document available.

Mr McGuinty: Given that there's some subjectivity inevitably connected with this wording, why couldn't we come up with a time frame?

Mr Galt: If I can just toss in, there's nothing that has to be done here. All they have to do is just let go of it. It's not that they have to make a decision to work with it or manipulate it; it's just a matter of releasing it. I would think even under freedom of information this would then be available, because it's in the legislation that it's available. I can't picture why a minister would sit on it.

Mr McGuinty: I know of one who sat on a decision for over a year.

Mr Galt: Was that an NDP minister?

Mr McGuinty: I'm not going to name the minister.

Ms Churley: I think that's something all ministers have in common.

Mr Galt: I've never been one. You could answer that best.

Mr McGuinty: I'm giving you an example. It was the Red Squirrel Road case, I believe, that the minister in that case sat on — Chuck, you may remember this — for over a year before it was made public. That's my concern. I'm just putting it on the record.

Mr Galt: I appreciate your concern. I'm not sure how else we could write it other than "yesterday, if not sooner."

Ms Churley: That sounds good.

The Chair: Is that an amendment to the amendment?

Mr Galt: No.

Ms Churley: I think I support this, although on principle I've been so disappointed in what's been happening overall with this bill that I haven't been supporting anything. Although I have some concerns about the word "promptly" too, I think this is probably a good thing, and

one small area where it appears as though the government listened. It doesn't hurt them any, because if the proponent says, "We don't want to" — both parties have to agree, but I understand that in mediation, in order to get the people to the table, sometimes there's got to be some confidentiality. I think this is reasonable, given that the parties have to agree. At the end of the day it may or may not be made public, but at least there's an opportunity there.

The Chair: Other comments? Are we ready for the question? All those in favour of the motion? Opposed? The motion is passed.

Ms Churley: I move that subsection 8(10) of the Environmental Assessment Act, as set out in section 3 of the bill, be struck out and the following substituted:

"Fees and expenses

"(10) The proponent shall pay the fees and reasonable expenses of the mediators and shall provide adequate funding for the mediation process to the other parties to the mediation in accordance with the prescribed criteria and procedures."

That is more explicit than in the government (10) as it now stands, "The proponent shall pay the fees and reasonable expenses of the mediators." I think this is extremely important, given that there is no intervenor funding act any more. That ran out, and the government chose not to renew it or put in an alternative method, so citizens are hanging out there. There is a big proponent, a big development going on, and citizens can very easily not be awarded costs at all until the end of the case or the end of the hearing, which is very problematic. This could ensure that if there is a mediation process, citizens can participate in a meaningful way and be fully funded in order to do that. Otherwise, it could be a sham if citizens don't have access to equal and meaningful participation.

1630

Mr McGuinty: I just want to support the comments made by Ms Churley. One of the things that we heard from witnesses who appeared before the committee on an ongoing basis was that it didn't matter what perspective they were bringing; they felt it was in the interests of the proponent and in the interests of the process that those who had objections or had concerns had a real say, and the sooner the better. Of course, they can't do that in a genuine way unless they have funding. Intervenor funding being off the shelf now, what this does is it's an attempt to restore that to some extent, saying, "If you're going to go into mediation and you want to have some representation there, you could bring forward some studies or whatever." This just enables that, to make sure the parties are on an equal footing.

The Chair: Debate? Seeing none, I'll put the question. Those in favour of the motion? Those opposed? The motion is defeated.

Mr McGuinty: I move that part II of the Environmental Assessment Act, as set out in section 3 of the bill, be amended by adding the following section:

"Board decision re major waste management facility

"8.1 The board shall hear and decide an application for an undertaking that involves either building or expanding a major waste management facility."

What we're trying to do here is to ensure that major waste management facilities are never exempted from the full hearings process of the legislation. I was the one to talk about "promptly," so I'm sure somebody is going to raise this notion of "What the heck does 'major' mean?" It's a fair enough question. To that, I can offer that the government has released regulations defining large and small landfill sites. If the government was to support this amendment but has trouble with the word "major," perhaps the wording can be altered to allow "major" to be defined in the regulations.

Ms Churley: I support this motion. It seems to me that this ties in with the broken promise again — very definitely. Harris has made the promise that the current legislation should be as it stands today around that, and it's another opportunity for the government members to keep the Premier's promises for him. I suggest voting for this, Dr Galt.

Mr Galt: Certainly Bill 76 maintains the ministry's authority to send any EA to a hearing where there are significant, outstanding environmental issues. If there are no outstanding contentious issues, then a hearing is not necessary. Certainly past experience demonstrates that not all waste-related EAs require a hearing to make a decision. Seventeen out of 23 landfill EAs were approved without going to a hearing, for example, Paris landfill, Essex-Windsor, and I could go on. I have the list if you want to hear the others, 14 that did not have a hearing.

The Chair: Any further debate? Seeing none, I'll call the question. Those in favour of the motion? Those opposed? The motion is defeated.

Mr McGuinty: I move that subsections 9(2) to (5) of the Environmental Assessment Act, as set out in section 3 of the bill, be struck out.

What I'm trying to do is remove the restriction that the board can only make a decision as limited under subsection 10(1) and remove the power of the minister to restrict the board's process. We've got a later amendment here which more broadly directs the board to consider the purpose of the act, the evidence given and the proponent's compliance in making a decision.

The Chair: Ms Churley, do you have any comment?

Ms Churley: Not at the moment.

The Chair: Debate? Any further comments? Seeing none, I'll call the question. Those in favour of the motion? Those opposed? The motion is defeated.

Government motion, section 3, subsection 9(6).

Mr Galt: I would move that subsections 9(3) to (5) of the Environmental Assessment Act, as set out in section 3 of the bill, be struck out.

This provision is necessary for later government motions dealing with the scope of board hearings. We're devoting section 9 of the bill to hearings on the entire application. Section 11.1.1 will address hearings when there are only some outstanding contentious issues that are being referred to the board.

Mr McGuinty: This is the scoping authority, as I understand it.

Mr Galt: Yes.

Mr McGuinty: And it's being removed through this amendment, but it's being replaced elsewhere. Is that right?

Mr Galt: Yes. We're not losing it.

Mr McGuinty: So you're lifting our spirits only to dash them.

Mr Galt: Our apologies.

Mr McGuinty: I'll support this amendment.

Ms Churley: I think we're a little out of sequence here. Was that subsections 9(2) to (5)? Which one are you on here?

Mr Galt: It's subsections 9(3) to (5). These papers have a habit of getting out of place.

Ms Churley: Yes, they do. We thought we sorted that out. No, I have no comments.

The Chair: I'll call the question. Those in favour of the motion? Those opposed? Unanimous. Historic moment.

Mr Galt: I move that subsection 9(6) of the Environmental Assessment Act, as set out in section 3 of the bill, be amended as follows:

1. By striking out "documents" in the second line of the English version and substituting "things."

2. By adding the following paragraph before paragraph 1:

"0.1 The purpose of the act."

3. By striking out paragraphs 5 and 6 and substituting the following:

"5. If a mediators' report has been given to the minister under section 8, any portion of the report that has been made public."

Substituting the word "things" for the word "documents" will allow the board to consider the purpose of the act in addition to the list of documents. Adding the requirement for the board to consider the purpose of the act is consistent with the requirements placed on the minister in making decisions and was raised by a number of deputants to the hearings. The final clause of the motion reflects earlier government motions with respect to disclosure of a mediators' report.

Ms Churley: It seems to me that this is moving in the right direction, but why not go a step further? I think that complete disclosure is what we want here, again, so that the public — Mr McGuinty, would you go ahead with yours? I want to check something.

1640

Mr McGuinty: Sure. You may be getting at the same thing that I was getting at with respect to the third point in this amendment here: Why wouldn't we release any portion that has not been made public? As I understand, this section itself is found within the bill. We're talking about what the board is going to consider and then we talk about, "If a mediators' report has been given to the minister," we're only going to give a portion of the report that has been made public. But why not give the entire report to the board and let them decide what's relevant and what's not?

Mr Galt: I'm going to call on Mr FitzPatrick to respond to that.

Mr FitzPatrick: That would relate back to what we dealt with in the previous motion dealing with subsection 8(9), to the effect that the minister shall make the report public promptly after the minister makes his or her decision under section 10 or the decision of the board under section 9 becomes effective, the idea being that the

report would not be made public until the decisions are all made, unless the parties to the mediation consent to all or a part of the report being made public. If they consent, there would not be any difficulty.

Mr McGuinty: If the report's given to the board, does that mean it's been made public?

Mr FitzPatrick: I'm sorry?

Mr McGuinty: If the report in full is handed to the board, does that mean all the report is deemed to be then public?

Mr FitzPatrick: By and large, the board operates in public. In holding a hearing, they're operating in public. It's difficult for them to take extraneous material into consideration without being able to bounce it off the public, the people that are testifying before them.

Mr McGuinty: Can anybody give me an example of a case where you wouldn't want the board to see a part of a mediators' report, why you'd want to keep that from them?

Mr Galt: That's in general just to not want to give any bias or prejudice the board. The intent was that the mediators' report would be kept confidential until the board was finished and the minister was finished with their decision-making. There wouldn't be the same kind of freedom for the mediation if they realized it was going to be made public prior to the final decision. That was the thinking all the way through in this exercise.

The Chair: Further debate? I will call the question. Those in favour of the motion? Those opposed? The motion is carried.

Government motion, subsection 9(7).

Ms Churley: What about 9(6)?

The Chair: We just dealt with that.

Ms Churley: So we won't be looking at the Liberal and NDP —

The Chair: No. We ran into this the other afternoon.

Ms Churley: Yes, we did, didn't we? Therefore because that one was voted —

The Chair: That's right. As soon as we vote on it, then any other recommendations — the procedure is if you're dealing with the same section and you have some —

Ms Churley: I know.

The Chair: Then we call for an amendment to the first one that is put forward on the floor and we can deal with it, but once it's passed by the committee, everything else is redundant if we address that section again.

Mr Galt: I move that subsection 9(7) of the Environmental Assessment Act, as set out in section 3 of the bill, be struck out and the following substituted:

"Same

"(7) The decision of the board must be consistent with the approved terms of reference for the environmental assessment."

This provision requires that board decisions must be consistent with the approved terms of reference, as we heard from many of the deputants during the hearings.

Ms Churley: I just need further explanation as to what this means.

Mr Galt: It really requires the board to respond to the terms of reference consistent with the thinking of this

bill, that they deal with the terms of reference and not a lot of other things.

Mr McGuinity: Can I follow up on that? What prompted this? Has there been a history of boards making decisions that are inconsistent?

Mr Galt: It's for clarification purposes. In the current Environmental Assessment Act there are no terms of reference. Nothing is being made in reference to it until they can be as broad as they want to be. That's part of the problem of what's been going on over the years, this 12- or 15-year exercise. We're trying to narrow it down to the terms of reference with the upfront discussions, how they're being developed by the public along with the proponent, and then it's limited to those binding terms of reference as decided. It's just sort of making sure it carries all the way through.

The Chair: Further debate? I'll call the question. All those in favour of the motion? Those opposed? The motion is carried.

We have an NDP and Liberal motion, same one. Ms Churley, I think it's your shuffle.

Ms Churley: As at 9(8)?

The Chair: At 9(8), yes.

Ms Churley: I move that subsection 9(8) of the Environmental Assessment Act, as set out in section 3 of the bill, be struck out.

I think that's because — I have to doublecheck again — it's stupid and unnecessary. But give me a moment —

Interjection: Tell us how you really feel.

The Chair: Thank you for your formal description.

Ms Churley: — while I check it, if Mr McGuinity wants to make a comment. I have to figure out what my notes meant by that. That's what I've written down. So I'll go over it again.

The Chair: Mr McGuinity, do you have a comment?

Mr McGuinity: What we're talking about here is requiring that the board make a decision within a certain deadline, and I guess I just have faith in the board. We have to pick the minister or the board as to who ought to know better how much time it's going to take to properly consider and deliberate. I would pick the board. This amendment removes the ability of the minister to impose those deadlines or any extensions of deadlines.

Ms Churley: I've now read it and I guess I would stand by my previous words, that it's just unnecessary. I'm not quite sure if the government would like to explain why it's there.

Mr Galt: Certainly no one wants long, protracted hearings that cause proponents and taxpayers a great deal of money, and the setting of time frames would be done on an individual basis in consultation with the board and will take into account the complexity and contentiousness of the matter at hand. I think it's only fair to citizens. If you leave it open-ended, the big corporations, the big organizations, will grind away until they finally work the local citizens into submission. By hanging on to that, that shouldn't happen.

Ms Churley: That's been my argument around the terms of reference. I think on our motion — I forget which one it is now, but the Liberals' and my motion on two-year time frames, for instance, on the terms of

reference — your answer back was, "We need that flexibility." I guess what I'm saying is you're being inconsistent here. I argued back and said, "People want certainty," which is one of your stated objectives here. I'm just pointing out an inconsistency in your approach here, that on one hand you're leaving all that flexibility at the front end, which I think is problematic, and here you're saying that in the interests of speeding things up, let's not have it. What's the difference?

Mr Galt: In each case it's being established by the circumstance at hand or at that time or the one that they're dealing with. In the case of what you're referring to, in the two years, there are some very big environmental assessments that may take longer to get the scientific information together. In each case what we're saying is, "Let's have a look at the significance of the environmental assessment in the reasonable time," and the time frame would be established.

Mr McGuinity: There's a second question here, Mr Chair. Does this subsection (8), as it stands, allow the minister to in effect describe the length of the hearing itself, define the length of the hearing? Is that what we're talking about here?

Mr Galt: Yes, the minister would. That's my understanding. The board's going to have to make the decision and the minister would establish their time frame. Again, are they sending them a whole lot of stuff or are they sending them a little bit of stuff? There's no point in giving them two years if they can do it in two months, and let's get on with it rather than having a fixed time for all instances.

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Ms Churley: So would you consider "unusual, urgent or compassionate" — I mean, changing circumstances is always a concern in these. What would you see would be a reasonable reason for it to be extended?

Mr Galt: Do you want to run that again?

Ms Churley: What would be reasonable? What it says now is unless "there is a sufficient reason (which is unusual, urgent or compassionate) for doing so" to change the date.

Mr Galt: I guess we're referring to compassionate reasons — a hall burns down, somebody is seriously ill, that kind of thing.

Ms Churley: What about in terms of the substance of the EA itself? Could you see circumstances changing to the extent that the deadline could be changed? Because it says, "The board shall make its decision by the deadline the minister specifies...." I'm just wondering how much flexibility there would be. There are the words "unusual, urgent or compassionate." You talked about a building maybe burning down, but —

Mr Galt: The only reasons I can see — very special, urgent reasons or compassionate ones — the minister would see at the time, but they would be very special ones. It wouldn't be just because they want more time to debate it.

Ms Churley: That's fine.

Mr McGuinity: What information will the minister use? How is the minister going to go about defining the length of hearings?

Mr Galt: As he or she is packaging how long it should be?

Mr McGuinty: Yes.

Mr Galt: It's going to relate to what's been scoped and what's not considered as contentious, that they're not sending. It's really what is being sent to the board; they would make a decision on that package, a reasonable amount of time for them to work on it, and give an end point so it does get finished and people know with some certainty where it's all at. Again, that's back to the main purpose of this whole bill, to bring some certainty into the exercise.

Mr McGuinty: Let's say that a minister intent on shortening the length of these hearings makes a mistake at the outset and allows for too little time. Will the minister be allowed to extend? Is that unusual, urgent or compassionate? Is it unusual for a minister to make a mistake?

Mr Doyle: Not in this government.

Ms Churley: Who said that?

Mr Doyle: It's a joke.

Mr Galt: It certainly has in there "unusual" and, yes, I can see where a special circumstance could be classified as unusual.

I think the ultimate thing is to get an end point on this, and if at all possible let's stay within that so there's some certainty for the public and for everyone which brings not only time but costs and all of it into the process.

Ms Churley: I support deadlines where it's appropriate and when they are sufficient for people to examine sometimes very complex documents. One of my problems throughout all of this is that the focus seems to be, in my view, taking away the public's time. It seems like the government has decided, "Oh, gee, we've got to speed things up; if we squished the time here and here and here...." I think that what we keep forgetting, and I keep coming back to it, is that we know that the biggest delays in previous EAs have actually been at the government review period. I think we keep losing that in this process, and you know that.

That's been a problem in the past, and it's obviously going to continue to be a problem in the future with a third of the staff cut; I must say, some very valuable staff. I haven't heard a commitment that they're going to increase, and I'd like to hear that, the reviewers or whatever you call the people in the department who deal with EA. I foresee that that's where the problems are going to be.

I'd like to see some of the deadlines just lengthened a bit in other areas. But there's an awful lot of work that has to be done by the government before it actually gets to a hearing. I suppose you would consider, if that work hasn't been done and there is inadequate information, then that would be not unusual but a circumstance in which the government could extend it. But that's a big problem that, frankly, you're really going to have to look at if you expect that the time frames are really going to be speeded up, because they aren't. There are a whole lot of flaws in this, but one of the biggest ones is that you're not going to have enough people in the government to do the work.

The Chair: Further debate?

Ms Churley: Enough said.

The Chair: All right, I'll call the question. Those in favour of the motion?

Ms Churley: Is that our motion?

The Chair: Yes, it is. Those opposed? The motion is defeated.

A government motion, section 9.1 of section 3.

Mr Galt: I move that section 9.1 of the Environmental Assessment Act, as set out in section 3 of the bill, be struck out and the following substituted:

"Referral to board following request

"9.1(1) This section applies if under subsection 7.2(3) a person requests the minister to refer an application or a matter that relates to one to the board for hearing and decision.

"Referral of application

"(2) If referral of the application is requested, the minister shall refer the application to the board under section 9 unless in his or her absolute discretion,

"(a) the minister considers the request to be frivolous or vexatious;

"(b) the minister considers a hearing to be unnecessary; or

"(c) the minister considers that a hearing may cause undue delay in determining the application.

"Same, related matter

"(3) If referral of a matter that relates to the application is requested, the minister shall refer the matter to the board under section 11.1.1 except in the circumstances described in subsection (2).

"Referral in part

"(4) Despite subsection (2) or (3), if referral of an application or of matters relating to the application is requested but the minister considers a hearing to be appropriate in respect of only some matters, the minister shall refer those matters to the board under section 11.1.1."

A comment, if I may. We have maintained the ability of the minister to send an entire application to the board for a hearing. In addition, we heard from many people who supported giving the minister the powers to scope hearings. The motion clarifies that the minister has the powers to refer only the outstanding contentious issues to the board for a decision in certain circumstances. We believe this will add more certainty and timeliness to the hearing process. This provision clarifies the minister's powers to refer a matter to the board for a decision after a request has been made.

Mr McGuinty: The following amendment is a Liberal motion and it relates to the same section. Before I move an amendment — I don't want to lose it; I want to make that known right now — I want to specifically raise the issue in the government amendment. Under subsection (2), we're talking about the possibility that the minister considers a hearing to be unnecessary. My amendment deals with that issue. I'm concerned about the minister finding a hearing to be unnecessary and I note that in hearings before the Ontario Municipal Board the minister's ability to reject a hearing must lie on the hearing causing undue delay or being frivolous or vexatious. We've introduced a new element here. It's within the complete and absolute discretion of the minister. The minister himself or herself may say, "To my way of

thinking, this is unnecessary," and that's the end of it. Why do we have to introduce that subsection to be there?

Mr Galt: As I understand, it's already in the act. This is packaging it. I can read to you where it is in the act.

Mr McGuinty: The act as opposed to the bill, right?

Mr Galt: Yes.

Mr McGuinty: Okay, fire away.

1700

Mr Galt: It comes under hearings, 12(2)(b): "shall, upon receipt of a notice requiring a hearing pursuant to subsection (1) or pursuant to subsection 7(2) unless in the minister's absolute discretion he or she considers that the requirement is frivolous or vexatious or that a hearing is unnecessary or may cause undue delay."

As I mentioned earlier, we've had 17 out of 23 through without hearings, the most recent ones; on landfill sites, that is.

Ms Churley: Would you say that this amendment reflects EAAC's recommendation? You know there was a recommendation that hearing requests would only be denied if not "in good faith," and you have used those words in there. I'm dying to ask Mr Byer here. I'm curious if that's one of the areas where you did look at their recommendations and see that — careful, because he is in the room.

Would you say that your amendment here reflects EAAC's recommendations that there should be a hearing if there's a request for one unless it can be proven essentially that a hearing request only be denied if it's not made in good faith, is frivolous or vexatious or is made only for the purposes of delay?

Mr Galt: The hearings are going to be held if there's anything that is contentious. The scoping idea is only to get rid of those items that are not contentious and that everybody agrees with.

Ms Churley: Can you tell me who makes the decision now under the existing EA? Is it the minister or the board?

Mr Galt: The minister, presently.

Ms Churley: So that hasn't changed.

Mr Galt: No.

Mr McGuinty: In the past, how often has the minister considered a hearing to be unnecessary?

Mr Galt: Could we get that number for you? I don't have that figure myself.

Mr McGuinty: Any kind of a ballpark?

Mr Chuck Pautler: In the past, the number of files directed to the board for a hearing was approximately one in four. Currently, over the last several years, the number is one in 12, more or less.

Mr McGuinty: One out of 12, so 11 out of 12 hearings are deemed to be unnecessary?

Mr Pautler: That's correct.

Mr McGuinty: In those cases the minister is exercising the authority under the act to which Dr Galt just referred. Is that right?

Mr Pautler: That's correct, or there was no request for a hearing.

The Chair: Further debate? I will ask the question. Those in favour? Those opposed? The motion is carried.

We will now move to Liberal motion 9.1.1.

Ms Churley: That's the same as this.

The Chair: There are two, Liberal and NDP.

Ms Churley: What was that one we just did, the government motion?

The Chair: The next one, move it along. It's 9.1.1.

Ms Churley: Right, and we just did 9.1.

The Chair: That's correct.

Mr McGuinty: This one's about intervenor funding.

Ms Churley: Mr Chair, I'll move this motion.

I move that part II of the Environmental Assessment Act, as set out in section 3 of the bill, be amended by adding the following section after section 9.1:

"Intervenor funding

"9.1.1 If the board holds a public hearing with respect to a decision to be made under section 9 or 9.1, the proponent shall provide adequate intervenor funding in accordance with such criteria and procedures as may be prescribed for persons who participate in the hearing."

This is to me the second most problematic aspect of the bill. I've said before, and members of the committee heard it time and time again as we travelled, that the end of the intervenor funding act under the Attorney General — not being renewed, nothing to replace it — is extremely problematic. What it means is that despite the title of the bill and the comments from the minister and members of the committee throughout that this is an act to improve consultation, there are many areas of the bill where that just isn't true, isn't the case.

If this is not put into the bill, it just makes a complete sham of any meaningful consultation, if you talk, time and time again, to little citizens' groups that are up against proponents with literally millions of dollars and the ability to hire whomever they want to basically say whatever they want. That has happened; as we know, science is not exact and most everybody knows that if you've got the money, you can find a scientist who can tell you and testify to what you want to hear. There are often two sides to issues, and that's true with legal help as well.

If citizens' groups do not have the guarantee of adequate intervenor funding, it will be Goliath and David many times over, and that's like the bad old days when citizens really did not have a proper opportunity to be consulted and to participate on an even close to equal footing. They are often not, even with intervenor funding, but this will shut people out without any meaningful participation whatsoever and make this entire bill, the entire process, a complete sham. This is an absolutely essential motion for the government members to support. I take it, Dr Galt, you will support us on this, because despite the changes that you're going to make in the bill that I entirely disagree with, at the very least giving people the opportunity to participate on some kind of fair footing is absolutely essential in a democracy.

Mr McGuinty: I support the comments made by Ms Churley. Let's remember that intervenor funding does not impose direct costs on the government. This government has allowed the legislation to lapse. There has been no effort made to replace it in any way, not even to say: "We're going to cap it. There's going to be intervenor funding allowed, but it's going to be such-and-such a percentage. Such-and-such a cap will apply." There's nothing. This is obviously an effort to introduce some

kind of intervenor funding. Some criticisms are legitimate in that we have spawned, to some extent, an industry — consultants and lawyers who have derived benefit from intervenor funding — but I think the large scale, the big picture, provides that it has been of net benefit to the province and to environmental protection in the province. For that reason, I support this.

1710

Mr Galt: Part of the terms of reference, funding, can be agreed to; that can be right up front. The requirement for early consultation encourages all parties to work cooperatively to identify and resolve issues at the front end rather than later at the hearing stage. Intervenor funding unfortunately encouraged participation at the end of the process only, and a board will continue to be able to award costs once hearings are complete. We don't agree with intervenor funding to continue.

Ms Churley: That's a really flawed way of looking at this process, and if you really believe that, you don't understand the EA process. As much as can be resolved up front, that's great and I'd like to see that motion we made earlier, although you didn't support it, that there is more certainty around the funding of citizens groups during the mediation process. However, leaving that aside, I support all the way whenever possible to try and resolve issues before a hearing, but the fact remains that once an issue goes before a hearing, it means there's a problem. We know that from experience. If you can't work out a lot of these issues beforehand through mediation, which I'm glad to see in this bill — it's one of the things I do support fully.

But you know that if it goes before a full EA with all the bells and whistles, it's going to be a big deal. The proponent is going to be hauling out whomever they can to support their position on this. There are going to be scientific studies on waste management, dumps, ground-water contamination measurements, all kinds of things that are going to involve scientists who cost money and lawyers who cost money, and these people on the community level are going to be screwed. Excuse the language, but that's essentially what it comes down to.

This is making me really angry, because if it gets to the process where it's a big environmental assessment hearing, the little people, the people your government claims to care about, are going to be left out in the cold and can forget it. They can kiss their case absolutely goodbye because they won't have the resources. To be told they may or may not be rewarded costs at the end of a hearing is a sham. People will be afraid to get involved because they won't know what's happening.

This is ridiculous. People can't raise enough money by a little bake sale in their community to participate in a full-blown, big environmental assessment hearing. Have you ever been to one of these things? All of your scoping in the world — once these things go to a hearing, it's going to be very complex and very involved. Citizens have got to be given more of an equal footing or it's all a sham. That's the truth. So you're really going to let this go?

The Chair: I'll call the question.

Ms Churley: Recorded, please.

Ayes

Churley, McGuinty.

Nays

Doyle, Fox, Galt, Jordan, Pettit, Preston, Smith.

Mr Galt: I move that subsection 9.2(1) of the Environmental Assessment Act, as set out in section 3 of the bill, be amended by striking out "or 9.1" in the second line and substituting "or 11.1.1".

These are just housekeeping changes that reflect later government motions.

The Chair: Ready for the question? Those in favour? Those opposed? The motion carries.

Mr McGuinty, do you want to take the next one, subsection 9.2(3)?

Mr McGuinty: I'm just looking for it here.

Ms Churley: Is that subsection 9.2(3)?

The Chair: Yes.

Ms Churley: Do you want me to?

The Chair: Go ahead, Ms Churley.

Ms Churley: Then you pick up the next one. We have the same amendment on this so I'll read it into the record.

I move that subsection 9.2(3) of the Environmental Assessment Act, as set out in section 3 of the bill, be struck out and the following substituted:

"Notice and comment

"(3) When the minister proposes to make an order under this section, the minister shall give adequate public notice of the proposed order and shall ensure that members of the public have an opportunity to comment on it."

Simply, not supporting this amendment is just more of what I had been saying earlier. It's shutting the public out of the process. Voting for this amendment gives the government the opportunity to put its money where its mouth is a little bit here and vote to allow the public to be given more information and be able to comment on it.

Mr McGuinty: It's a case again of public notice and an opportunity for public comment and supportable on those grounds alone.

The Chair: Debate? I'll call the question. Those in favour of the motion? Those opposed? The motion is defeated.

Government motion, section 3, subsections 10(3) and (4).

Mr Galt: I move that subsections 10(3) and (4) of the Environmental Assessment Act, as set out in section 3 of the bill, be struck out.

This is a housekeeping provision which reflects another government motion in section 11 which contains the deadline provisions, which is actually the next motion.

Ms Churley: The next motion deals with why you're doing this? Can't we do it in reverse order then?

The Chair: It's the next section. We have to go section by section, so that's why.

Ms Churley: Oh, I see. It's hard to vote on this, so I guess we'll have to ask now — can we just discuss the implications of this vis-à-vis the next motion from the government?

The Chair: Ms Churley, do you have a comment or a question?

Ms Churley: No, that's a question, because you're saying this is not necessary because of the next amendment, section 11 of the Environmental Assessment Act.

Mr Galt: That's right, yes.

Ms Churley: Perhaps what you could do, even though we have to vote on this one first, is explain the next one so we understand the connection. Did I misunderstand you earlier? I must admit I was only half-listening because I was reading the next motion.

Mr Galt: Maybe I'll call on Mr FitzPatrick to explain the juggling within the act. Would that be helpful?

Ms Churley: Yes.

Mr FitzPatrick: There were provisions in several places respecting deadlines on the various decisions that the minister can make when the matter is put before him or her and we're pulling all of those together in section 11, which is the next motion that the government will put forward.

Ms Churley: I see. If I could continue, this is simply a setup for the next section and we will see in that one. But you're not taking any deadlines out?

Mr FitzPatrick: Correct.

Ms Churley: In the next section will there be some deadlines extended or changed? Are you taking anything away from it?

Mr FitzPatrick: All of the deadline provisions are being pulled together in a more logical fashion in one place.

Ms Churley: So they're just being pulled into another section. No other implication. Promise? Swear? Cross your heart?

Mr FitzPatrick: Correct.

Ms Churley: They crossed their hearts. Okay.

Interjection: You must have been a Girl Guide.

Ms Churley: Nope.

The Chair: Are we ready for the question? All those in favour of the amendment? Those opposed? The motion is carried.

Government motion, section 11.

Mr Galt: I move that section 11 of the Environmental Assessment Act, as set out in section 3 of the bill, be struck out and the following substituted:

"Deadline, minister's decisions

"11(1) Once the deadline has passed for submitting comments on the ministry review of an environmental assessment, the minister shall determine by the prescribed deadline whether to refer a matter in connection with the application to mediation or to the board under section 11.1.1.

"Same

"(2) By the prescribed deadline, the minister shall decide the application under section 10 or refer it to the board for a decision under section 9.

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"Different deadlines

"(3) For the purpose of subsection (2), different deadlines may be prescribed for applications in which a matter is referred,

"(a) to mediation; or

"(b) to the board under section 11.1.1,

"and for those in which no referral is made.

"Validity of decisions

"(4) A decision of the minister is not invalid solely on the ground that the decision was not made before the applicable deadline."

Just a comment, Mr Chair: This provision helps to clarify that the minister shall have a prescribed time frame for making decisions. These include matters that have been referred to mediation or to the board.

The Chair: Debate?

Ms Churley: Sorry, if you could give me a moment here.

Mr McGuinty: Could Dr Galt give the explanation again? What is the purpose of this provision?

Mr Galt: Part of it down in subsection 3(3) is giving the time out provision for mediation to the board for the minister's decision so that there can be some recommendation and the minister will still have the same quantity of time. Essentially, as I understand it, that's what's referred to here all the way through, to ensure that the minister still has his or her time regardless of the other activities that are going on and still that a deadline is being established.

Ms Churley: "Validity of decisions," the very last one: "A decision of the minister is not invalid solely on the ground that the decision was not made before the applicable deadline." What does that mean?

Mr FitzPatrick: It's a guarantee essentially that if for some reason the deadline is not met, the proponent and the members of the public who have put a lot of time and effort into it will not have thrown that away.

Mr McGuinty: The board can't exceed the deadline but the minister can?

Ms Churley: Why have deadlines if you have an escape clause? First of all, that's gobbledegook. I would prefer that it be clearer, that last statement, but why have deadlines if you have an escape clause? I mean, why try to pitch this politically if you don't mean it? It seems to me you either have deadlines or you don't have deadlines, and here we go again on this question of some deadlines are firm, some are flexible. It seems like the ones that we the opposition have some concerns about have to be firm. But I just think you can't have it both ways, and that's what you're trying to do here and that's what you're pitching politically. But you've got an escape clause here.

Mr Galt: As you go through the bill, there's no penalty in any place if the deadline isn't met. There are not that kind of teeth in here. But you run into many situations where you come to a certain date and it's totally null and void and court procedures and we just don't want it — should they go over a day or two we just have this in here to ensure that it's not going to be totally thrown out and have to start all over again.

Ms Churley: You see my point, though?

Mr Galt: Yes, I do.

The Chair: Further debate? I'll call the question. Those in favour of the motion? Those opposed? The motion is carried.

Government motion, subsection 11.1(4).

Mr Galt: I move that section 11.1 of the Environmental Assessment Act, as set out in section 3 of the bill, be amended by adding the following subsection:

"Notice of deferral

"(4) The minister or the board shall give notice of the deferral to the proponent and to every person who submitted comments to the ministry under subsection 7.2(2)."

A comment: This motion reflects what we heard from deputants with respect to keeping the public informed on various decisions. This government motion requires that the proponent and any other person who submitted comments are notified of the minister's deferral decision.

Ms Churley: I just want to ask a question. I have a motion dealing with subsections 11.1(4) and (5). If we're to vote on this sub (4), then could we still deal with sub (5) or not, because this one is only sub (4).

The Chair: Sub (5) would be fine, but the section under sub (4) should be dealt with here, so you can amend it in part or in whole.

Ms Churley: Right. So I could make an amendment?

The Chair: You can make an amendment to this because you have an amendment yourselves, both of you, and we're dealing with this 11.1(4) now. If you pass it, then we move on to the next section. We can move on to sub (5) because this section doesn't deal with (5), or you can amend this amendment under sub (4) in relation to your own amendment as it stands.

Ms Churley: I guess what I'd like to do is I think we're both going after the same thing here, but I believe that either the government agrees to support our amendment and removes this, or I would amend the notice of deferral and have it say, as in the NDP and the Liberal motion:

"If the minister or the board proposes to defer deciding a matter, the minister or the board, as the case may be, shall give adequate public notice of the proposal and shall ensure that members of the public have an opportunity to comment on it."

It strengthens that section. Would you agree to that?

Mr Galt: You're asking for a general public notice?

Ms Churley: Yes.

Mr Galt: And a comment period?

Ms Churley: Yes.

Mr Galt: No.

Ms Churley: So once again you're shutting out the public.

Mr Galt: No, we're being very specific that we're going to notify everybody who has commented.

Ms Churley: How would you know? Sorry. Well, he's saying, no, you're not shutting out the public and you are.

Mr W. Leo Jordan (Lanark-Renfrew): Define "public."

Ms Churley: In fact, we asked the government to define "interested parties" within the bill so that would be very clear, and they refused to do it. I can define it. They refused to put it in this bill. The Ministry of Environment and Energy does have guidelines about who the interested parties are. That's not within the bill. But we're talking about the public who have an interest in what's going on in their backyard or in their community here.

Mr Jordan: And they've made that known long before this.

Ms Churley: I think that every opportunity the public can be involved they should be involved and it furthers environmental protection in the long run. That's my submission, that you withdraw yours and support ours, the Liberal and NDP motion to follow, which I think is stronger.

The Chair: Is that a question to the parliamentary assistant?

Ms Churley: Yes, it's a question and he said no, I believe.

Mr Galt: Basically, what we're saying here is that we'll ensure that those who have made comment, who are involved, interested parties, will be notified. Of all these types of things that I've seen, the press is there, they're going to have it on the front page and you're going to know about it. It's probably a better way of notifying the public than trying to put it in some special ad on the back page.

The Chair: Does that satisfy you, Ms Churley?

Ms Churley: No, but we can vote on it.

The Chair: All right. Further debate on this motion? Those in favour of the motion? Those opposed? This motion is carried.

Under the next two Liberal and NDP motions, subsection (5), would you move that?

Ms Churley: I don't know whose turn it is here any more. We're just doing the "Reasons (5)" part, right?

The Chair: You're just doing (5), yes, "Reasons," correct.

1730

Ms Churley: "Reasons

"(5) The minister or the board shall give written reasons for a deferral, indicating why the deferral is appropriate in the circumstance."

I would just say that this act is supposed to be about accountability, and simply to government members that if you don't support this, then you're not supporting accountability throughout the process and you just can't continue to keep up that pretence. I would ask the government members to support this.

The Chair: Ms Churley, can I ask you, please, just to read the first section, "I move that section," ending with, "the following subsection," singular rather than plural, subsection (5).

Ms Churley: Okay. I move that section 11.1 of the Environmental Assessment Act, as set out in section 3 of the bill, be amended by adding the following subsection:

"Reasons

"(5)."

The Chair: Okay, fine. Thank you. All right. Other comment?

Mr McGuinty: I have a question for Dr Galt. Why would that be a problem for the minister or the board to give written reasons — they could even be very brief — for deferral?

Mr Galt: It's already happening. It's really redundant. The motion we just passed has looked after it.

Mr McGuinty: There's an obligation imposed there to provide written reasons then?

Mr Galt: That's my understanding, yes.

Ms Churley: What?

Mr Galt: It's a practice.

Mr McGuinty: The previous motion —

Mr Galt: “The minister or the board shall give notice of the deferral to the proponent and to every person who submitted comments to the ministry under subsection 7.2(2).”

Mr McGuinty: That’s notice, though, as distinct from reasons. They can always say, “It has been deferred, and these are the reasons why.” Come on, it’s been a long afternoon. You’ve got to give us one and this one makes good sense.

Mr Galt: Already in subsection 11.1(1), “The minister may defer deciding a matter that relates to an application if the minister considers it appropriate to do so because the matter is being considered in another forum or for scientific, technical or other reasons.”

Mr McGuinty: Is this the bill you’re reading from?

Mr Galt: Subsection 11.1(1) of the bill itself.

Mr McGuinty: Yes, but what’s that got to do with the reasons?

Ms Churley: You mean subsection 11.1(2)?

Mr Galt: Subsection (1).

Ms Churley: What’s that got to do with it?

Mr FitzPatrick: Subsection (1) deals with the minister; subsection (2) deals with the board. In either case they’d have to bring themselves within the words of the section. In other words, they’d have to have one of those reasons for having the deferral and those reasons would be given, would be disclosed.

Mr McGuinty: But I don’t see any obligation. It says here the reasons therefore, “because the matter is being considered in another forum or for scientific, technical or other reasons.” “Other” is anything. Why can’t we impose an obligation to give the reasons?

Mr FitzPatrick: In making the deferral they would be stating their reasons in order to bring themselves within the powers conferred in 11.1. Nothing more is required.

Ms Churley: So you’re saying it would be redundant to put this in?

Mr FitzPatrick: Yes.

Ms Churley: And I’m saying, if you don’t mind my interrupting, that I think it’s not as clear to me as you seem to think it is that that would have to be done. It even says, “may refer to the board, another tribunal or another entity for a decision a matter that relates to an application if he or she considers it appropriate in the circumstances.” Is that what —

Mr FitzPatrick: You’re moving to the next section.

Ms Churley: I’m sorry, 11.1(1). You see, I think some of this is gobbledygook. “The minister may defer deciding a matter” — is this the one? — “that relates to an application if the minister considers it appropriate to do so because the matter is being considered in another forum or for scientific, technical or other reasons.” That to me doesn’t suggest that the minister has to give written reasons indicating why the deferral is appropriate in the circumstances. I just think it would make sense to put that in there very clearly; if that’s the intention, even more so. I don’t think it’s redundant; it just clarifies it.

Mr McGuinty: Even assuming that this imposed an obligation on the minister to provide the reasons, which I don’t think it does, the minister has to say, “I’m doing

this for scientific, technical” or “I’m doing it for other reasons,” without describing in detail what those other reasons might be.

Ms Churley: I also like having the words “written reasons” in there so that there is more than a verbal response, that people will be able to get any written comments about a deferral. It could have wide-reaching implications. I hope Dr Galt will support that.

Mr Galt: You’re very convincing this afternoon.

Ms Churley: You’re going to support that?

Mr Galt: We can support that, yes.

The Chair: Okay, are we ready to call the question?

Mr Galt: This is clear, on item 5.

The Chair: On item 5, yes; it’s subsection (5). Those in favour? Those opposed? The motion is carried.

If I can alert the members to the next section, 11.1.1, the Liberal and NDP motions address the same content, but they’re listed under 11.2. So if you look at the first one for amendments to the amendment, then that might be the way to proceed with that.

Mr Galt: I move that part II of the Environmental Assessment Act, as set out in section 3 of the bill, be amended by adding the following section (after section 11.1):

“Referral to board of part of a decision

“11.1.1(1) The minister may refer to the board for hearing and decision a matter that relates to an application.

“Restrictions

“(2) The minister may give such directions or impose such conditions on the referral as the minister considers appropriate and may amend the referral.

“Proposed decision

“(3) The minister shall inform the board of decisions that the minister proposes to make on matters not referred to the board in connection with the application.

“Notice of referral

“(4) The minister shall give notice of the referral to the proponent and to every person who submitted comments to the ministry under subsection 7.2(2) and shall give them the information given to the board under subsection (3).

“Basis for decision

“(5) The board shall observe any directions given and conditions imposed by the minister when referring the matter to the board and shall consider the following things to the extent that the board considers them relevant:

“1. The purpose of the act.

“2. The approved terms of reference for the environmental assessment.

“3. The ministry review of the environmental assessment.

“4. The comments submitted under subsections 6.5(2) and 7.2(2).

“5. If a mediators’ report has been given to the minister under section 8, any portion of the report that has been made public.

“6. The decisions the minister proposes to make on matters not referred to the board in connection with the application.

"Deadline for deciding

"(6) The board shall make its decision by the deadline the minister specifies or by such later date as the minister may permit if he or she considers that there is a sufficient reason (which is unusual, urgent or compassionate) for doing so."

These provisions clarify that the minister has the power to refer a matter or matters to the board for a decision. In doing so, the minister will inform the board of the decisions that the minister proposes to make on the matters not referred to the board. When holding hearings on the matter or matters referred to it by the minister, the board is required to consider the directions of the minister and consider to the extent necessary those other things as listed.

1740

Mr McGuinty: A question with respect to subsection (2), "The minister may give such directions or impose such conditions on the referral as the minister considers appropriate and may amend the referral." This sounds like scoping to me. Is that what we're talking about here? Why is that? What's the purpose of this?

Mr Galt: Essentially the whole section is on scoping. It's that part and parcel of the scoping process.

Mr McGuinty: We heard during the length of the committee hearings many concerns raised by people more experienced in these matters than me about some of the dangers of scoping, about tying of the board's hands, about not bringing forward to the board certain elements which ought to be considered in order to ensure there's a full environmental assessment. For that reason, I cannot support this amendment.

The Chair: Further debate? All in favour? Those opposed? The motion's passed.

We'll move to subsection 11.2(1), government motion.

Mr Galt: I move that subsection 11.2(1) of the Environmental Assessment Act, as set out in section 3 of the bill, be struck out and the following substituted:

"Referral to other tribunal, entity

"(1) The minister may refer to a tribunal (other than the board) or entity for decision a matter that relates to an application if he or she considers it appropriate in the circumstances.

"Deadline for referring

"(1.1) The minister shall make any decision to refer a matter to the tribunal or entity by the deadline by which the application must otherwise be decided."

These are housekeeping provisions which separate the decision paths for the minister sending a matter to the Environmental Assessment Board versus to another tribunal or entity and impose a deadline.

Mr McGuinty: The original subsection 11.2(1) provided for referral to the board and now this says you can't refer to the board. Why is that?

Mr Galt: It was just dealt with in section 11.1 is my understanding, in the previous motion.

Mr McGuinty: What does that mean? Does that mean that reference can still be made to the board?

Mr Galt: Yes. The reference to the board is in 11.1 and to the tribunal is here. Maybe Mr FitzPatrick can help us out a little bit here.

Mr FitzPatrick: As we have reorganized this process during the course of the hearings, it does become a little complicated to remember which provisions are in which places. But in the new scheme, referral of the entire matter to the board is in section 9. Referral of an individual subject matter is in section 11.1.1, which we just dealt with, and referral to some other entity other than a board will be here in 11.2 where, for instance, a technical matter relating to the size of nuts and bolts in a bridge or something like that might be referred to the director of approvals at the Ministry of Environment.

Mr McGuinty: I think I'm in need of intervenor funding here to retain a lawyer, Mr Chair. All right.

The Chair: Further debate?

Ms Churley: Are we still doing 11.1.1?

The Chair: No, 11.2.1.

Ms Churley: I had some comments to make on that but I expect it passed. Did it?

Mr Galt: Yes, unanimously.

Ms Churley: Unanimously, yes, right. On 11.2, which is what you're doing now, could I just — it's a government motion, so that would mean that our motion —

The Chair: Section 11.2.1.

Ms Churley: Still on the wrong one. If you'll give me a moment. Sorry, I had to leave the room for a moment. Okay, go ahead.

The Chair: I call the question. Those in favour of the motion? Those opposed? The motion's passed.

Government motion, subsection 11.2(4).

Mr Galt: I move that subsection 11.2(4) of the Environmental Assessment Act, as set out in section 3 of the bill, be struck out and the following substituted:

"Amendment

"(4) The minister may amend referral to the tribunal or entity.

"Deemed decision

"(4.1) A decision of the tribunal or entity under this section shall be deemed to be a decision of the minister."

The minister has the power to amend referrals to the board. This government motion provides the same powers to the minister to amend referrals to a tribunal or entity.

Mr McGuinty: Why do we have this deeming provision in here? A decision of the tribunal or entity is going to be deemed to be a decision of the minister?

Mr FitzPatrick: It's simply a drafting convenience. There are other portions of the act respecting what happens after there's been a decision of the minister. This slots these kind of decisions into those cross-references.

Mr McGuinty: So it's got nothing to do with liability or anything like that?

Mr FitzPatrick: Correct.

The Chair: I'll call the question. Those in favour? Those opposed? The motion's passed.

Subsection 11.2(5), government motion.

Mr Galt: I move that subsection 11.2(5) of the Environmental Assessment Act, as set out in section 3 of the bill, be amended by striking out "subsections (1) to (4)" in the third line and substituting "subsections (1) to (4.1)."

This is a government motion that's reflecting the numbering of the bill. It's really just a housekeeping exercise.

The Chair: Debate? I call the question. Those in favour of the motion? Those opposed? None being opposed, unanimous. The motion passes.

Under section 11.3, the same situation arises for the opposition parties as well in terms of which motion comes first. The government motion is first. Therefore —

Mr McGuinty: Why is it first, Mr Chair?

The Chair: Why?

Ms Churley: Because they're the government. Why else?

The Chair: I never understood we did it that way.

Ms Churley: No, seriously, is it because they have the majority so they're always considered first? Because they are on every —

Mr Galt: It's interesting to note the official opposition always gets the first question in the House, so maybe it's a ritual like that.

The Chair: Yes, the rationale I have is that it's a government bill. The government makes the motion and the opposition can make amendments to the motion.

Mr Galt: I move that section 11.3 of the Environmental Assessment Act, as set out in section 3 of the bill, be struck out and the following substituted:

"Reconsideration of decisions

"11.3(1) If there is a change in circumstances or new information concerning an application and if the minister considers it appropriate to do so, he or she may reconsider an approval given by the minister or the board to proceed with an undertaking.

"Same

"(2) The minister may request the board to determine whether it is appropriate to reconsider an approval.

"Same

"(3) The minister may request the board to reconsider an approval given by the minister or the board.

"Amendment

"(4) A decision approving a proponent to proceed with an undertaking may be amended or revoked in accordance with such rules and subject to such restrictions as may be prescribed.

"Non-application

"(5) Section 21.2 (power to review) of the Statutory Powers Procedure Act does not apply with respect to decisions made under this act."

1750

As a comment to this motion, these provisions clarify that the provisions of the Statutory Powers Procedure Act which allow boards to reconsider decisions on their own do not apply. The only time the board can reconsider a board decision made under this act is when requested by the minister. This government motion will add certainty to the decision-making process by ensuring that only the minister can trigger the board to reconsider a decision.

Ms Churley: Mr Galt, if you look at the NDP and Liberal motions covering the same section, if you look at (4), I believe it's the same: "A decision approving a proponent to proceed with an undertaking...." My motion is, "If the minister proposes to make an order under this section, the minister shall give adequate public notice of the proposal and shall ensure that members of the public have an opportunity to comment on it." I wonder if you would accept such an amendment to your subsection (4).

If there are changes, once again I come back to ensuring that members of the public have opportunities to know about it and comment on it.

Mr Galt: If I may, getting a little sorted out here, the comment period is going to take a fair amount of time. This also could be a situation of urgency. To include it, it would have to be redrafted, because we're talking here about the minister and the board, whereas in here it's just the minister. I really don't see the need for it.

Ms Churley: Why not?

Mr Galt: We were quite kind to you a little while ago; don't forget that. We agreed with you.

Ms Churley: But in all seriousness, it's another attempt on my part to adhere to the spirit of the title of the bill, "improve public consultation," whatever it is, and it's another example where there are restrictions and this is a chance to think of that.

I don't understand what section 21.2 — I don't know what you mean by subsection (5) there, "(power to review)...does not apply with respect to decisions."

Mr Jim Jackson: Jim Jackson here, environment and energy legal services branch. The cross-reference is to a section in the Statutory Powers Procedure Act which describes circumstances under which boards can determine to review their own decisions on their own initiative or at the request of anybody. Under the government motion, only the minister can initiate that amendment or change of an earlier decision of the board.

The Chair: Are we ready for the question? Those in favour of the motion? Those opposed? The motion is carried.

It's almost 6 o'clock and I'd like to raise the issue of our next meeting time. I gather it's impossible for members tomorrow. We only meet on our own in terms of Monday and Tuesday afternoons; otherwise it has to be a motion from the House. We had thought of next Tuesday but I understand Ms Churley has a problem. She'll be out of town.

Ms Churley: Sorry, a clarification. Tuesday, what date would that be?

The Chair: That would be the 14th.

Mr Galt: There is some urgency to get on with this, I'm told. It has been listed for tomorrow. I have another engagement, but it'll have to be cancelled and we'll get on with this tomorrow, as originally scheduled.

The Chair: So we would then meet tomorrow.

Ms Churley: I object to that because of the uncertainty around — I'm not trying to delay here. I did say I would attempt to get through this today, but it's obviously too much. There has been confusion around how long this is going to take because, to be clear, there was a new minister who phoned both Mr McGuinty and me and asked us if we'd agree to delay the clause-by-clause so that he could have time to review the bill, which made sense, and we both said yes.

It was my understanding that the two days we put aside for clause-by-clause were two full days because the House was out of session. We're now back in session. Two days means only a few hours per day. We are going to extend it, but I believe we have to do it by consensus here, given that we didn't have any established days.

Unfortunately, tomorrow I'm out of town for the entire day and I can't change that.

The Chair: Our established days are Mondays and Tuesdays. Ms Churley, how's next Tuesday?

Ms Churley: The 15th?

The Chair: The 14th.

Ms Churley: On a Monday, yes, I could accommodate that.

The Chair: Tuesday?

Ms Churley: My schedule must be wrong, because I'm —

The Chair: Monday is Thanksgiving.

Ms Churley: Oh, I see. Sure, yes, I could accommodate —

Mr McGuinty: I'm unavailable next Tuesday. I had set aside tomorrow.

1800

Mr Galt: It's been scheduled here for tomorrow and we are giving the liberty or whatever that we proceed with one more day.

I move that this be wound up tomorrow between 3:30 and 6, as scheduled by the clerk.

The Chair: There's a motion on the floor, but Ms Churley —

Ms Churley: I'm sorry, but this is not a government committee, it's a legislative committee and nobody told me that we were scheduling further hearings for tomorrow. I had no idea. Were people notified there were committee hearings tomorrow?

The Chair: Apparently the notice went out last Thursday notifying you.

Ms Churley: How come we came in here today being told that we had only two days scheduled?

The Chair: Monday and Tuesday is the schedule.

Ms Churley: I mean all together we had one day last week and what you're saying is that Monday and Tuesday of this week had already been scheduled?

The Chair: Ms Churley, I've been advised by the clerk that, first of all, Mondays and Tuesdays are our official times to meet. If it's outside that, it requires some kind of agreement or motion or direction from the House. Therefore, we continue to meet until otherwise on our official days.

Ms Churley: I see.

The Chair: But there was a notice sent out last Thursday which —

Ms Churley: About the committee meeting as opposed to continuing with clause-by-clause.

Clerk of the Committee: It was indicated.

Ms Churley: Okay. If it was indicated, I'm sorry, I didn't see it. However, there has been mass confusion throughout on how long we were going to debate this bill. In fact, Dr Galt and I talked earlier today and it was my understanding from what he said that he thought we were going to finish today. I understand that there are committee meeting times set aside. I object to — I'm carrying this bill for my party. I understand the government wants to move it forward. I can't be here.

Mr McGuinty: I want to speak in support of Ms Churley. In fairness, she has been doing all the work on behalf of her party and it would be very difficult for another member to step in tomorrow and not have the

knowledge base she's acquired during the length of these hearings and in her capacity as critic, so I support the argument she's making. I think we should, if at all possible, put it off to accommodate her.

The Chair: You have a problem next Tuesday.

Mr McGuinty: I've got a problem with the Tuesday after that.

Mr Galt: It doesn't seem to matter where we move, somebody's going to have a problem.

The Chair: The next day would be Monday of the following week.

Mr Galt: I have a major problem as well tomorrow, but that's the schedule and we better get on and get this wound up.

Ms Churley: Why? I'm sorry, but I'd like to know. I am not trying to obstruct here. I really do have a problem and you have to admit there has been confusion —

Interjection.

Ms Churley: And we're discussing that motion. There has been confusion around how many days we're going to be examining this bill clause by clause. You also have to admit that I accommodated the minister. I had set aside full days during the summer to look at clause-by-clause and I accommodated the minister so that he could have time to review this bill. I understand you don't have to. I understand you would now like to push forward. I just think it's unfair. We accommodated the minister when he wanted more time. There was confusion about the days, given that we're now doing just a few hours a day instead of full days. I would like to finish off the clause-by-clause. That's my request. I think given that there have been a few tradeoffs made here already, it would be only fair.

I wonder if — one possibility — we could get special order in council to do a day when we're not meeting.

The Chair: Order of the House.

Ms Churley: Whatever. If we could find a day that the major people, Dr Galt and Mr McGuinty and myself, can be here, why don't we do that?

The Chair: There's a motion before the committee. Dr Galt, do you have any response to that request?

Mr Galt: I'm running into all kinds of complications to try and change the day, and like some of the others I'd like to have it on a different day too; I'm supposed to be speaking in Collingwood tomorrow afternoon. But it's get on with it and get this wound up. It's consistent we keep following through on the days the committee meets until it's finished and we've agreed to go to a third day. Let's do it tomorrow and get it over with.

Ms Churley: And get it over with.

Mr Galt: Get it completed.

Ms Churley: The next time Mr Sterling asks me to do him a favour, I'll remember this. I'm sorry, but I think it's pretty outrageous that we can't at least look at the calendar — I'm not asking to delay it for weeks — and see if, in the spirit of goodwill, we can find a day we can all accommodate. That's the way we've been trying to do this bill and I just think it's outrageous that my request that I continue and finish this bill not be at least — that we don't have at least an opportunity. Take out the calendar, see if we can find a day this week or next week that

we can all be here and see if we can get whatever it is we have to do in the House to approve it. I'm sure we can.

Mr Galt: So far I've heard problems with every day that's been mentioned either from yourself or from Mr McGuinty.

Ms Churley: We've only mentioned one other day.

Mr Galt: I think we've talked about Wednesday and we've talked about next Tuesday.

Ms Churley: There are two other days of the week we could look at. All right. I can see I'm not going anywhere with this. I don't understand why, but it will be remembered.

The Chair: Okay, ready to call the question? All those in favour of the motion? Those opposed?

All right, we'll meet tomorrow afternoon at 3:30 to continue clause-by-clause.

The committee adjourned at 1807.

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**In attendance / présents*

Substitutions present / Membres remplaçants présents:

Mr Ed Doyle (Wentworth East / -Est PC) for Hon Janet Ecker
Mr Doug Galt (Northumberland PC) for Mrs Johns
Mr Dalton McGuinty (Ottawa South / -Sud L) for Mr Kennedy
Ms Marilyn Churley (Riverdale ND) for Ms Lankin
Mr Gary Fox (Prince Edward-Lennox-South Hastings /
Prince Edward-Lennox-Hastings-Sud PC) for Mrs Munro
Mr Bill Vankoughnet (Frontenac-Addington IND) for Mr Newman

Also taking part / Autres participants et participantes:

Mr Leo FitzPatrick, counsel, legal services branch, MOEE
Mr Jim Jackson, director, legal services branch, MOEE
Mr Chuck Pautler, director, environmental assessment branch, MOEE

Clerk / Greffière: Ms Lynn Mellor

Staff / Personnel: Ms Laura Hopkins, legislative counsel

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**Official Report
of Debates
(Hansard)**

Tuesday 8 October 1996

**Journal
des débats
(Hansard)**

Mardi 8 octobre 1996

**Standing committee on
social development**

**Comité permanent des
affaires sociales**

Environmental Assessment
and Consultation
Improvement Act, 1996

Loi de 1996 améliorant le processus
d'évaluation environnementale
et de consultation publique



Chair: Richard Patten
Clerk: Lynn Mellor

Président : Richard Patten
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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON
SOCIAL DEVELOPMENT

Tuesday 8 October 1996

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DES
AFFAIRES SOCIALES

Mardi 8 octobre 1996

*The committee met at 1546 in room 151.*ENVIRONMENTAL ASSESSMENT
AND CONSULTATION
IMPROVEMENT ACT, 1996LOI DE 1996 AMÉLIORANT LE PROCESSUS
D'ÉVALUATION ENVIRONNEMENTALE
ET DE CONSULTATION PUBLIQUE

Consideration of Bill 76, An Act to improve environmental protection, increase accountability and enshrine public consultation in the Environmental Assessment Act / Projet de loi 76, Loi visant à améliorer la protection de l'environnement, à accroître l'obligation de rendre des comptes et à intégrer la consultation publique à la Loi sur les évaluations environnementales.

The Chair (Mr Richard Patten): Everyone's received the new package of what is remaining. I'll reconvene the meeting for clause-by-clause on Bill 76. Mr Wildman, you had a point to make. Let me, first of all, welcome Ms Martel to the committee, and Mr Ramsay as well.

Mr Bud Wildman (Algoma): Thank you, Chair. I recognize obviously that I have not been a party to the discussions of this committee, so I will put that forward in preface to what I have to say.

I am most concerned that what has been a tradition around this place for as long as I can remember apparently has not been followed with regard to the clause-by-clause consideration of this committee, that is, when a critic from one of the opposition parties cannot be present, just as when a representative of the government cannot be present, it is traditional that the absence of that individual is accommodated by the committee.

My colleague the member for Riverdale, who is the environment and energy critic for our caucus, understood that this committee was going to complete its work yesterday and, with that understanding, she had made some time ago another commitment to be absent from the Legislature today.

I understand that the committee had a great deal of work to do on clause-by-clause with a number of motions, a number of which I would point out are government motions for amendments, and the committee worked as diligently, I guess, as it could yesterday. But certainly I don't think anyone could argue, from my review of the situation, that anyone — NDP, Liberal or Conservative — was prolonging the debate.

We didn't complete it and now we are in a situation where the committee apparently, even though they were informed of my colleague's conflict and inability to be here, voted to continue the clause-by-clause debate, even though the NDP critic could not be present, and I find

that a most unfortunate transgression of the traditions of this place.

Mr Peter L. Preston (Brant-Haldimand): Mr Chair, may I speak to that? There were attempts made to accommodate your colleague and dates could not be found that coincided with anything that was available. It was as a last resort that we said: "We can't accommodate. Let's carry on."

Mr Wildman: Obviously the committee has made a decision. I just wanted to register my protest for that. I mean, if it meant waiting till next week, you could have waited till next week, in my view.

The Chair: Further comments? Thank you, Mr Wildman. Are we prepared to continue with clause-by-clause?

The first item on your revised package actually has to be dealt with after we deal with section 31.1. If we proceed to the second page, which is section 3, clause 12.2(2)(d) of the Environmental Assessment Act, that's a government motion. Dr Galt, would you commence with that motion, please?

Mr Doug Galt (Northumberland): I move that subsection 12.2(1) of the Environmental Assessment Act, as set out in section 3 of the bill, be amended by adding the following clause:

"(d) establish a reserve fund or another financing mechanism in connection with an undertaking."

This provision allows municipalities to establish reserve funds prior to receiving approvals for an undertaking as requested by the Association of Municipalities of Ontario. It's really all about planning ahead and giving them that opportunity.

The Chair: No debate? All right. I will call —

Mr Wildman: What is the reason for this?

Mr Galt: As I understand, municipalities are not in a position to develop a reserve fund unless there's a specific reason and this would give them the specific reason so that they could start planning for such an undertaking well in advance rather than waiting until it's approved and then trying to find the funds for it.

Mr Wildman: What happens if it's not approved?

Mr Galt: Then they have a few extra dollars in their coffers.

Mr Jean-Marc Lalonde (Prescott and Russell): I thought a municipality already had power to create reserve funds for such a project or the purchase of capital equipment.

Mr Galt: Maybe I can refer to Mr FitzPatrick.

Mr Leo FitzPatrick: I'm sure the municipality has those powers itself. However, under a strict reading of the Environmental Assessment Act, establishing that fund as part of an undertaking before they get approval would be illegal. This takes away any chance of that illegality.

Mr Lalonde: What do you call the fund that is created by development charges at the present time? It is divided according to the needs that there are going to be within the municipality. There's so much going for infrastructure for sewage services, so much going for the water filtration plant, so much for roads and fire services. It is in place at the present time. Every municipality had to pass a bylaw for that.

Mr FitzPatrick: The only problem would be if a particular fund were earmarked for a defined project before that project had been approved. There really isn't a problem with a general fund or with a fund that would be earmarked for a project subject to approval under this act. We tried to explain that to the municipalities, but they preferred to have it clear in black and white.

Mr Lalonde: My last comment on this: I'm not against it, but I thought it was already in place.

The Chair: As the Liberal mayor of a municipality —

Mr Lalonde: We had it going for years.

Mr David Ramsay (Timiskaming): Maybe we should go back and look in the books.

The Chair: Any other comments? Debate? Mr Wildman.

Mr Wildman: Frankly, I agree with Mr Lalonde. The municipalities can establish general reserve funds. So if they have a reserve fund and then they want to withdraw moneys from that reserve fund for a specific project, they can do so, can they not?

Mr FitzPatrick: It's a question of establishing a fund for a specific project before the approval of the project. If they have a general fund, develop a project, get the approval and then withdraw money from a general fund, that would not be a problem.

Mr Wildman: So this is kind of redundant, isn't it?

Mr FitzPatrick: It is kind of redundant. If a municipality took some care in defining what the funds were for, they wouldn't have a problem, but as I said, they came to us asking for this specifically to take away all doubt.

Mr Galt: It's really an added clarification over and above what's already there. It re-emphasizes what they can do and earmarks it very specifically.

Ms Shelley Martel (Sudbury East): I'm just looking at this section which refers to "Other Matters," and "proponent" is not defined as being the municipality unless that comes in a previous section that I haven't looked at. What if the proponent in this case is a private sector proponent? Wouldn't that whole section be null and void and not have any impact whatsoever? Can you clarify that "proponent" in this case does mean only the municipality?

Mr FitzPatrick: This is worded generally. It's really only of concern to municipalities. Private sector proponents are not automatically caught by the act until designated.

The Chair: Further debate? Ready for the question? All those in favour of the motion? Those opposed? No opposition. The motion is carried.

We have a Liberal and an NDP motion that are drafted with similar words. We've had a short tradition of going back and forth. Would you like to take this one, Mr Ramsay?

Mr Ramsay: I would like to address this motion and hope the government will accept this as I think it's fairly straightforward. I'm sorry, I'll move the amendment.

I move that section 12.2 of the Environmental Assessment Act, as set out in section 3 of the bill, be amended by adding the following subsection:

"Exception

"(1.1) Subsection (1) does not authorize a person to undertake site preparation, filling, grading, vegetation removal or other forms of site alteration or disruption related to the undertaking."

I would say to the government members that I hope they will support this in that it would ensure that no project was commenced in any way, in any physical sense, until the complete environmental assessment was accomplished and approved. I see it just as a safeguard so that no project would be commenced until we knew it had full environmental approval.

I'd like to ask the parliamentary assistant if he has any objection to this, and if he does, why.

Mr Galt: It's quite clear already in the bill, in 12.2(1)(b), "acquire property or rights in property in connection with the undertaking," and (c), "prepare a feasibility study and engage in research in connection with the undertaking." It's quite specific as to what they can do. They can go ahead and do some surveying and some testing and own the property, but the bill is quite clear in saying that's as far as they can go.

Mr Ramsay: But wouldn't this be a good safeguard as a prohibitive action so that at least we would be assured that this sort of action — actually starting to physically deal with the environment, taking off subsurface soil and all the other areas of concern here, grading, filling, vegetation removal — we would know for certain that a proponent would not be able to proceed unless the project had environmental approval? Wouldn't that be a good safeguard? If you feel the intent is there by what the act allows, then wouldn't it be wise to have the prohibition included in the act? Then we would nail that down tight. We would know that no disruptive work to the ground could occur before all approvals were in.

Mr Galt: As we understand it, as it's written in the bill it's quite clear that they can acquire, they can do survey work and testing and that kind of thing, but they cannot go any further. I believe it's quite clear in the bill what they're saying in their amendment.

Mr Wildman: I listened very carefully to the parliamentary assistant's argument in favour of the last government amendment, and he said it was to add more clarity. It wasn't really necessary because it was already clear in the bill, but just to give comfort to the municipalities, he wanted to make it extra clear. This is all we're doing here. We're doing exactly what the parliamentary assistant suggested in his argument in favour of his own amendment. So I would think he would be in favour of this amendment.

The Chair: Further debate? I'll put the question. Those in favour of the motion? Opposed? The motion is defeated.

Another Liberal-NDP motion. Ms Martel, would you like to begin the introduction of the next motion, please.

1600

Ms Martel: I move that section 12.2 of the Environmental Assessment Act, as set out in section 3 of the bill, be amended by adding the following subsections:

"Effect of activities

"(7) The minister shall not consider any pre-approval activities when making a decision under section 10 and the board shall not consider such activities when making a decision under section 9 or 9.1.

"Restoration order

"(8) The minister may by order require a person who has altered the site of an undertaking in contravention of this act to restore it or rehabilitate the environment to its previous condition.

"Enforcement

"(9) A certified copy of an order made under subsection (8) may be filed with the Ontario Court (General Division) and thereupon it is enforceable as an order of that court."

The Chair: Any comment, Ms Martel?

Ms Martel: No, Mr Chair.

The Chair: Mr Ramsay, do you have any comment on that motion?

Mr Ramsay: Again I think it's put here as a safeguard so that if any pre-approved activities take place, there is a mechanism for the minister to issue a restoration order to rehabilitate the ground where the work was done. It's for clarity and to ensure that proponents don't get a jump on approval.

Mr Galt: I believe that this bill already stipulates that no person shall proceed with an undertaking before receiving an approval, therefore this motion really is unnecessary.

The Chair: Further debate? I'll put the question. Those in favour of the motion? Opposed? The motion is defeated.

A government motion.

Mr Galt: I move that subsection 12.4(1) of the Environmental Assessment Act, as set out in section 3 of the bill, be struck out and the following substituted:

"Transition

"(1) This part, as it read immediately before the coming into force of section 3 of the Environmental Assessment and Consultation Improvement Act, 1996, continues to apply with respect to the following:

"1. An environmental assessment submitted before the coming into force of section 3 of that act.

"2. Subject to subsection (1.1), an environmental assessment submitted within one year after section 3 of that act comes into force.

"Election

"(1.1) A proponent who wishes the predecessor part to apply shall notify the ministry in writing when submitting the environmental assessment."

A number of deputants suggested that the transition provisions of the bill needed more flexibility. A new transition provision is being added whereby within one year of the act coming into effect a proponent can elect to follow either the old or the new process.

The Chair: Debate? I'll put the question. Those in favour of the motion? Opposed? The motion is carried.

A similar Liberal-NDP motion, Mr Ramsay.

Mr Ramsay: I move that part II.1 of the Environmental Assessment Act, as set out in section 3 of the bill, be struck out.

While many environmental experts support the concept of class environmental assessments, there is a concern that the process under this bill will fail to limit these class reviews to projects that are sufficiently limited in nature. For example, it would not be appropriate to have one class environmental assessment which would cover the construction of all future landfills in the province. Major landfill projects should undergo individual assessments. We're concerned that what you have here could, for instance, allow class EAs for something as potentially dangerous as landfill sites.

Ms Martel: If I might follow up, the issues of landfill sites are very controversial ones. Most of us have had experience with that in our own backyards, to coin a phrase, and it would seem to me that the government would be wise to clarify that local situations will still have to go through a local process and that you cannot have a blanket provision, such as you would have with a class EA, of any sort in this case with respect to landfill sites. That might very much undermine the local process that I feel people have to go through, very much so, just to be sure that local people have the opportunity to have input into the decisions that are going to affect them and their community. They wouldn't have that kind of process, nor that kind of input, in a class EA system.

Mr Galt: Certainly the new part II.1 has been added to acknowledge the success of class EAs and formalize a class environmental assessment process which works well and represents 90% of environmental assessment projects carried out annually. Class environmental assessments approved before the coming into force of proposed amendments will remain valid and are deemed to comply with the new act.

The debate or discussion or comments made, yes, I guess in theory what they're saying is possible but I can't imagine a minister ever allowing it for something such as a landfill or incinerator. That type of thing will always be an individual environmental assessment.

Ms Martel: I never would have thought that any health minister in this province would take on to himself the powers that we saw being taken on by this minister through Bill 26, so you don't give me a lot of comfort when you say that you can't imagine it could ever happen. We're saying that the local process is very important. It allows for local input in a way a class EA just does not. All I think we're requesting is that the process at the local level continue to be protected and that it not be subverted by a class structure.

Mr Ramsay: I'm a little concerned by the parliamentary assistant's answer that in theory that possibly could happen but that he doubts a Minister of Environment would allow that to happen. This is why we have legislation because, especially when it comes to the environment, we'd like to specifically nail down certain areas of concern.

Let me weave a little story here. Let's pretend a good friend of the Premier was a proponent of a landfill and had invested millions and millions of dollars into this project. I think that for the comfort of the proponent and

the Premier and the government you'd want to have the protection built into the act so that a minister could not arbitrarily make the decision that this landfill could be done just as a class EA and not have the full environmental assessment be the test to this project. I think you would want that as a member of the government.

If a minister inadvertently did this, it could certainly bring a lot of suspicion upon a government if it looked like, in this hypothetical sense, a project was given the okay without due process. I think you would want that as a government member so that, just like we have with our Members' Integrity Act, you have everything aboveboard and up front so that all your actions are above suspicion. I would hope that you reconsider this so that this could never happen in the future.

The Chair: Further debate? There being none, I'll put the question. Those in favour of the motion? Opposed? The motion is defeated.

Another Liberal-NDP motion of similar drafting. Ms Martel.

1610

Ms Martel: I move that subsection 13(1) of the Environmental Assessment Act, as set out in section 3 of the bill, be struck out and the following substituted:

"Application for approval

"(1) A person may apply to the minister to approve a class environmental assessment with respect to a class of undertakings that are minor in nature, recur frequently and have limited, predictable and mitigable environmental effects."

If I look at this in comparison to what the government amendment is that appears in the bill, the substantial change occurs around "class of undertakings" qualified by "minor in nature, recur frequently and have limited, predictable" etc. As it currently stands in the bill, there is no such defining nature with respect to what undertakings a person may apply to the minister for approval of. We've tried to define those characteristics and limit them as much as possible.

The Chair: Thank you. Mr Lalonde, do you have any comment? No? Dr Galt.

Mr Galt: This motion is redundant because "class" has already been defined in subsection 1(6) of the bill and further amended by the government motion which was carried by this committee on Tuesday, October 1, 1996. We have class EAs that are working well now. Why introduce limitations that are really unnecessary?

The Chair: Further debate? Being none, I'll call the question. Those in favour of the motion? Those opposed? The motion is defeated.

A government motion.

Mr Galt: I move that subsection 13(3) of the Environmental Assessment Act, as set out in section 3 of the bill, be amended as follows:

"1. By striking out 'a class environmental assessment' in the second and third lines and substituting 'an approved class environmental assessment.'

"2. By striking out 'or 9.1' at the end of clause (b)."

This is essentially a housekeeping provision.

The Chair: Debate? There being none, I'll call the question. Those in favour of the motion? Those opposed? The motion is carried.

The next is a government motion as well.

Mr Galt: I move that part II.1 of the Environmental Assessment Act, as set out in section 3 of the bill, be amended by adding the following section (after section 13):

"Obligation to consult

"13.0.1 When preparing proposed terms of reference and a proposed class environmental assessment, the applicant shall consult with such persons as may be interested."

This provision requires a proponent to consult with interested persons when preparing terms of reference for a parent class environmental assessment. This is parallel to the provision provided to individual environmental assessments in section 6.1 of the bill and combines the requirement to consult on both the terms of reference and the parent class environmental assessment.

The Chair: I'll just make a point especially for some of the new participants here. When we come upon a section where all three parties or two parties are dealing with an amendment, the way to deal with the same issue at the beginning is to take your motion, if you don't agree, and amend what is proposed in the first instance. If we make a decision on who makes the first motion, then the rest just fall by the wayside. I just thought I would inform them.

Mr Galt: Thank you very much, Mr Chair. That's only fair.

Ms Martel: To the parliamentary assistant, if I'm clear, you're adding a very specific requirement that there will be consultation. Was that left out in the original drafting? Are you just fixing that?

Mr Galt: Maybe I should walk you through, if you don't mind. In the original we had enshrined in the bill that there would be requirement of public consultation in the environmental assessment. What wasn't in the original bill was enshrined consultation for the development of the terms of reference or work plan, and what this is really doing is just tidying up and making sure that everything is covered to ensure that it will happen. It was covered earlier, the actual amendment, but this just tidies it up in the class as well.

It was something that came out loud and clear in the hearings that they wanted the public involved, and rightly so, when we thought about it, that they needed to be involved right up front in this design period as well as in the actual work in putting the environmental assessment together.

The Chair: Further debate? There being none, I'll call the question. Those in favour of the motion? Those opposed? The motion is carried.

We move to subsections 13.1(2) and (3), Liberal and NDP motions.

Mr Ramsay: I move that subsections 13.1(2) and (3) of the Environmental Assessment Act, as set out in section 3 of the bill, be struck out and the following substituted:

"Same

"(2) The proposed terms of reference must indicate how the environmental assessment will meet the requirements set out in subsections 6.2(2) and 14(2).

"Restriction

"(3) The minister shall not approve the proposed terms of reference unless,

"(a) before submitting the proposed terms of reference, the proponent has provided adequate public notice of the proposed terms of reference and has given members of the public an opportunity to comment on them;

"(b) the proposed terms of reference have been reviewed by those ministries and agencies that may have an interest in or be affected by the undertaking;

"(c) an environmental assessment prepared in accordance with them will meet the requirements of subsection 6.2(2).

"Same

"(4) Subsections 6(4) and (5) apply with respect to the terms of reference with necessary modifications."

This amendment brings the consultation amendments we have proposed for the individual's EA into the class EA process. What's important about this amendment is that it ensures that the minister will not approve the terms of reference for a class EA to proceed unless the proponent has consulted with those affected on terms of reference, as required in our previous amendment, and the terms of reference have been circulated to the affected ministries, and also the terms of reference follow the general EA procedures laid out in subsection 6.2(2).

The Chair: Any comment, Ms Martel?

Ms Martel: No, Mr Chair. I agree with the amendment that's been placed.

Mr Galt: Certainly the bill provides sufficient detail with respect to the contents of a class environmental assessment and enables additional requirements to be prescribed. The bill requires proponents to prepare class EAs in consultation with such persons as may be interested.

Mr Chair, we do have an amendment to the amendment. It's getting kind of complicated here, but we would have to strike out their amendment, because ours is on 13.1(3). I may have to have some instruction from the clerk to make sure we're on track with this, but I'd move this as an amendment to the amendment.

I move that subsection 13.1(3) of the Environmental Assessment Act, as set out in section 3 of the bill, be amended by striking out "to (5)" in the first line and substituting "to (6)."

The Chair: This would replace the whole recommended amendment here, so your amendment is to this amendment?

Mr Galt: Yes, if that is in order, through the clerk. I think it is, but on parliamentary procedure I could use some divine guidance.

The Chair: So your amendment to the amendment is to strike out everything after "I move that subsection 13.1." That would be taken out and replaced by what you just read into the record?

Mr Galt: Yes.

1620

The Chair: All right. Seeing that it's an amendment to an amendment, we will vote on that first. First of all, do you want to make any further comment on it?

Mr Galt: My amendment to the amendment is purely a housekeeping activity in the bill.

The Chair: Any debate on the amendment to the amendment?

Mr Ramsay: Could I get a clarification, Mr Galt, what this will actually do now, your amendment to our amendment?

Mr Galt: If we vote in favour of this amendment, then it strikes out your amendment and puts ours in place. Then we'll have to vote on the amended amendment, as I understand the procedure. So I'm in favour of both.

The Chair: The amendment to the amendment. Ready to receive the question? All those in favour? Those opposed? The amendment to the amendment carries.

Are you ready for the question on the amended amendment, the motion as amended? All those in favour? Those opposed? The amended amendment is carried.

The next one is subsection 13.1(5). Mr Ramsay, do you want to speak to that one, please.

Mr Ramsay: I move that section 13.1 of the Environmental Assessment Act, as set out in section 3 of the bill, be amended by adding the following subsection:

"Effect of approval

"(5) The approval for the proposed terms of reference expires two years after it is issued."

This amendment ensures that the approved terms of reference for a class EA expire after two years, and this is to ensure that the proponents do not sit on the approved terms of reference for a class EA while over time the need for the projects changes. This amendment mirrors a similar amendment we put forward for individual EAs.

Mr Galt: This has already been discussed and debated under individual environmental assessments and has been voted down. As previously discussed with the terms of reference for individual environmental assessment motions, it's too limiting, it does not take into consideration project-specific circumstances. Each terms of reference will contain an expiry date which reflects the nature of the project. Therefore, this motion really is unnecessary.

I do follow what you're saying, and we have concern too that we don't want it running forever. If you get into some big linear projects such as hydro lines or 407, that type of thing, you'd have to end up piecemealing it if the two-year limitation was in there. With each project a time frame would be part of the terms of reference.

The Chair: Further debate? There being none, I'll call the question. Those in favour of the motion? Those opposed? The motion is defeated.

A government motion.

Mr Galt: I move that section 13.2 of the Environmental Assessment Act, as set out in section 3 of the bill, be struck out.

This is essentially a housekeeping provision which is now included in section 13.0.1.

The Chair: Debate? Ready for the question? Those in favour of the motion? Those opposed? The motion is carried.

Mr Ramsay: I move that subsection 14(3) of the Environmental Assessment Act, as set out in section 3 of the bill, be struck out.

This section allows the minister to exempt a class EA proponent from following the comprehensive EA review criteria set out in section 6.2, and this amendment deletes this loophole. We think it's pretty important that the

loophole be deleted. Of course, this amendment mirrors a similar amendment we've put forward for individual EAs under subsection 6.2(3).

Mr Galt: As previously discussed, for individual environmental assessments this clause is required to ensure that proponents in consultation with the public and government agencies are able to focus on environmental assessments on environmentally significant issues on a project-by-project basis.

We are trying to get away from the encyclopaedic and costly environmental assessments that don't necessarily contribute to good environmental protection. Stakeholders will be consulted on the development of terms of reference by the proponent, and the minister will seek input prior to approval. This clause also allows more information than that already provided in the bill.

The Chair: Further debate? There being none, I'll ask the question. Those in favour of the motion? Those opposed? The motion is defeated.

The next one is a replacement government motion.

Mr Galt: I move that section 15 of the Environmental Assessment Act, as set out in section 3 of the bill, be struck out and the following substituted:

"Application of part II

"15. Sections 6.3 to 11.3 and 12.1 apply with necessary modifications with respect to a class environmental assessment."

This is a housekeeping provision to be consistent with authorities provided for in individual environmental assessments.

The Chair: Debate? All right, seeing none, I will call the question. Those in favour of the motion? Those opposed? The motion is carried.

Dr Galt, subsection 17(4).

Mr Galt: I move that section 17 of the Environmental Assessment Act, as set out in section 3 of the bill, be amended by adding the following subsection:

"Same

"(4) Section 12.4 applies with necessary modifications with respect to a class environmental assessment."

This really allows for the one-year transitional period in class environmental assessments.

The Chair: Debate? Any further debate? Seeing none, I will call the question. Those in favour of the motion? Those opposed? The motion is carried.

A government motion: This is a second replacement, which was handed out today. I gather all committee members have a copy of this. This replaces the replacement motion.

Mr Galt: On the beige-coloured sheet that's been circulated, I move that section 3 of the bill be amended by adding the following part to the Environmental Assessment Act (after part II.1):

"Municipal waste disposal

"17.1(1) This section applies with respect to an undertaking by such municipalities as may be prescribed where the facilities or services of another person will be used for the final disposal of waste,

"(a) by depositing it at a dump;

"(b) by landfilling; or

"(c) by incineration.

"Prohibition

"(2) No municipality shall proceed with an undertaking to dispose of waste unless the municipality obtains approval to proceed under this act.

"Interpretation

"(3) For the purposes of this section, a municipality is using the facilities or services of another person if the municipality enters into contracts or makes other arrangements with the person with respect to disposing of the waste.

"Same

"(4) For the purposes of this act, the undertaking to dispose of waste includes,

"(a) the enterprise or activity of the other person; and

"(b) any proposal, plan or program of the person with respect to the disposal of the waste."

1630

Certainly during the standing committee hearings, we heard submissions that made it very clear that waste disposal has environmentally significant impacts. This amended motion would allow the government to bring forward a regulation in the future to require an environmental assessment where municipalities are contracting out for the waste disposal only.

The intent of this motion is to ensure that municipalities evaluate the broad definition of the environment, being natural, social and economic, and alternatives when considering third-party contracts for waste disposal. When the regulation is being drafted, there will be stakeholder consultation and the draft regulation will be placed on the Environmental Bill of Rights registry.

Mr Ramsay: I've got a number of questions on this. The first one I want to know, because it's been a while since I've been involved in clause-by-clause, is that up in the top right-hand corner, we have "second replacement motion, government motion," and then we have "5-LAH," and the 5 has been crossed out and replaced by "6." What does the "6-LAH" stand for?

Ms Laura Hopkins: This is a record-keeping code used by legislative counsel for electronic record-keeping purposes.

Mr Ramsay: But what does it mean?

Ms Hopkins: LAH are my initials.

Mr Ramsay: And 6?

Ms Hopkins: The 6 is the number of the document.

Mr Ramsay: Okay. Over the last couple of days this has changed. My colleague Mr McGuinty had asked at the beginning of clause-by-clause yesterday, did the government have any proposed changes to this amendment, and your answer yesterday at about a quarter to 4 was no. How did this change happen?

Mr Galt: At the beginning of the hearings yesterday I was unaware that there would be further amendments, further discussion, listening, looking at the amendment. We've seen fit to change the amendment and present it in this form.

Mr Ramsay: You didn't envision this problem, obviously, because now we have an amendment after the act was tabled. What was the concern? You've explained that in the hearings you had heard some concern about the placement of waste by a private contract. I'm just trying to get at what has really provoked this amendment.

Mr Galt: It was brought to our attention that it could be interpreted very broadly in the areas of collection, the three Rs essentially, to transfer stations. We wanted to tidy it up, so it's been written in this form.

But I think you should be aware that up at the top it says "may be prescribed," which is really saying "may write regulations." That's what this is all about: stating that this regulation may be written based on the content in this amendment.

Mr Ramsay: As I'm sure you're aware, this motion, I believe even in its revised form as of today, is causing a lot of concern with municipalities in this province. I take it that you have been in communication with a few of them. I have a copy here, for instance, of a letter dated October 8, from Joan King, Metro councillor. I take it that you've received this letter addressed to you?

Mr Galt: I have received correspondence from Ms King. Whether it's that one or not —

Mr Ramsay: I think it's the same. She says:

"Dear Mr Galt,

"Please find enclosed the motion that Metro council adopted on Sept. 26, 1996, regarding the amendment to Bill 76.

"In my opinion, this amendment will be problematic for Metro's short-term disposal requirements. I estimate that the time that will be needed for Metro to complete an EA will force a lift at Keele Valley.

"I sincerely hope that this concern has been duly considered by your minister and government.

"Yours sincerely,

"Joan King."

Is Ms King right about that?

Mr Galt: Essentially that's Metro's decision, as I understand it. This is about disposal and it's about allowing the writing of regulations. That's what this amendment's all about. Any regulations that will be written will be out for consultation, will be on the Environmental Bill of Rights registry and will be in discussions with people like Metro, AMO, the waste management association etc.

Mr Ramsay: What would be the time frame on this, because as you know and I think why this is causing uncertainty is that Metro very shortly is going to be making some decisions, and it looks like maybe now some short-term decisions, about the disposal of waste. It is uncertain by this amendment what would be required and by whom, because in the first part it said, "This section applies with respect to an undertaking by such municipalities as may be prescribed," so we don't know what municipalities yet. Do you have Metro in mind for this?

Mr Galt: We're just concerned about environmentally significant disposal projects. The regulations, in consultation with the public, will be written and we're looking at this bill for early next year.

Mr Ramsay: Are you concerned about the environment in Utah, for instance?

Mr Galt: We're particularly concerned about the environment in Ontario.

Mr Ramsay: So does this section apply to a municipality that wishes to export waste out of the province?

Mr Galt: This amendment applies to the writing of regulations that will relate to this particular legislation.

Mr Ramsay: But I think what's causing a lot of grief and heartburn at AMO headquarters right now as we speak is that municipalities do not understand how this may apply to them. I see that you have, as of today, started to delineate a little more clearly, because there were concerns about the three Rs, as you mentioned, and I appreciate that this is an ongoing piece of work. I certainly applaud the changes that you've made within this today, but it still raises a lot of uncertainty as to what municipalities this may apply to and, for instance, to a project that involved a foreign jurisdiction.

Mr Galt: We're still discussing contracting third-party involvement and we're talking about developing regulations, which will be through consultation at that time.

Mr Ramsay: Let's just be hypothetical then, though it's not really too hypothetical because Metro now has a short list, and they're all private sector contractors. They are dealing right now with four proposals that involve the private sector. So this would include them. Three of them involve the United States and one involves Ontario.

What I'm asking is, if Metro decided that they would pick one of the American projects, what do they have to do? The prohibition says, "No municipality shall proceed with an undertaking to dispose of waste unless the municipality obtains approval to proceed under this act." I guess the question is, what sort of approval would Metro need if they decide to ship Toronto waste to Utah, for instance? What would be required?

Mr Galt: Certainly there have been various opportunities Metro has had in the past — there have been stops and starts etc, and you're dealing with something that's hypothetical when you started out, and we're back to the consultation. They'll be thoroughly involved in the consultation in the development of these regulations. To get into that aspect, what we're doing here is writing legislation that will give the opportunity to write the regulations when the opportunity or the time is there.

Mr Ramsay: What's the time frame of this legislation? I guess what Metro is wondering now is, what happens if they make a decision in the next few months? At this time their activity falls under the present legislation, but some time in the future, depending on when this is given royal assent, and also then depending afterwards, if you decide to make your regulations to this act, Metro is concerned and other municipalities are concerned about when and if they may be caught up by this. You've produced a lot of uncertainty here, especially with the biggest municipality in our province, being our capital, Toronto. Did you understand the uncertainty that this amendment is creating with Metro at this time? They are on the eve of making a decision as to the disposition of their waste.

1640

Mr Galt: We're certainly concerned about environmental protection in the province of Ontario, and this is part and parcel of that. The regulations will be written as soon as possible. They're looking at timing of royal assent for the early part of next year. I come back to, consultation will be carried out with as many parties as are interested in discussing it when the regulations are written.

Mr Ramsay: The question is then, does this amendment apply to protecting the environment in a foreign jurisdiction?

Mr Galt: We're all about protecting the environment in Ontario to the very best ability that we can.

Mr Ramsay: In other words, what you're saying is you would not require Metro to undertake some sort of process under this act if it chose to export waste to a foreign jurisdiction.

Mr Galt: What I'm saying is it would depend on how the regulations are written. You would have to look at and discuss and debate in the development of those regulations what they would contain. At this point in time, it's hypothetical for me to say what's going to be in those regulations. This amendment is all about setting out the opportunity to write those regulations having to do with third-party contracting.

Mr Ramsay: Wouldn't it be clearer if we said "in Ontario" then? Every time you answer me, you say, "This amendment is about protecting the environment of Ontario," and I certainly applaud that, but why don't we state that in here somewhere, that that's what this is about? I'd certainly support that.

Mr Galt: This is about the natural, social and cultural protection of the environment in the province of Ontario.

Mr Ramsay: Could we have that in there then?

Mr Galt: That's what the act is all about.

Mr Ramsay: But it didn't say, "Ontario," that's all.

Mr Galt: That's already in the act.

Mr Ramsay: Then you're saying that this would not apply to the exportation of waste.

Mr Galt: No, I haven't said that.

Mr Ramsay: Then I think we seem to have a problem here, because on the one hand you're saying the act only applies to Ontario, but when I ask you, would this particular amendment affect in any way a decision by a municipality, for instance, to contract with a foreign recipient of Ontario waste, you're saying yes, it might apply.

I'm waiting for an answer.

Mr Galt: My apologies.

Mr Ramsay: Do you have a further clarification on this for me? Do you see the problem I'm having?

Mr Galt: I follow your problem. You understand the act goes back to — right at the very beginning of the act, I can read it to you, the very last line is, "in or of Ontario (environment)."

Mr Ramsay: I like that and that's fine and I support that, but when I ask you, could the regulations that could be drawn from this amendment affect the exportation of waste to another jurisdiction, you're saying it could.

Mr Galt: This will apply to any third-party contracting of the disposal of garbage. Again, what we're debating really is an amendment to allow regulations to be written. How the regulations are written is what you're getting into, and that's really not debatable today. What's debatable is about this part of the legislation to allow regulations to be written. You're going down the road to the consultation part of the regulations and the development of those.

Mr Ramsay: But putting in this amendment that allows you to, some time down the road, write some regulation to this bill could have a profound impact upon Ontario municipalities as to the disposition of their waste. It's germane to talk about it today because in a sense you

potentially have put up a roadblock here to the municipalities of Ontario to freely make the decisions as to how they dispose of their waste.

I remember in the campaign — and I must say you quickly fulfilled this promise you had made — you did not feel it was the part of the province to interfere with the municipal responsibility of waste disposal. You amended the previous government's act and brought it back into the municipal domain.

The concern municipalities across the province are having is that you have now opened a door potentially for your getting back into that business again of making decisions as to where or how Ontario municipalities can dispose of their waste. It's really central to this bill and not something just theoretical down the road.

The question that I want to ask specifically is, how could this amendment have an effect on the export of waste? You said it may. How could it? Are we just talking about the way it's transferred between the municipality and the border? Is that what you would be concerned about? What is the potential impact of this on a decision to use a contractor out of province?

Mr Galt: The government supports local decision-making and consideration of all waste disposal methods. We also believe there should be accountability for environmentally sound decision-making and a mechanism to ensure public input.

Mr Ramsay: The "undertaking by such municipalities" concerns me. Which municipalities do you mean?

Mr Galt: We would be looking at which ones later on as regulations are developed. That's something in the regulations. We're not interfering with their right to contract. What we are ensuring is that Ontario's environment is protected.

Mr Ramsay: I agree with that. The only thing I'm concerned about, and I share this concern with the municipalities — there are many of them across the province, and I've used Metro as the example — is that on a daily basis they deliberate on this issue and are near to making some decisions. You're not giving any certainty. What you have done here is injected a tremendous amount of uncertainty into the waste debate in this province by this amendment. I just wish you would find some way to clarify this. Would Metro be included in this, for instance? Is the export of waste a part of this and what is required from your prohibition? I don't quite understand what is required. "No municipality shall proceed with an undertaking to dispose of waste unless the municipality obtains approval to proceed under this act." What sorts of things would they have to get approval for under this act?

Mr Galt: The first part of your question relates to what they can do, and as of today the present legislation is in effect and won't be changing until this receives royal assent. Until the end of this year they can act according to present legislation. By the time this receives royal assent, we will have regulations written, and while they're being written there'll be consultation carried out. There really shouldn't be that great a confusion, because the present legislation is there and they understand that. It's going to be there for the next two and a half months and then we'll be looking at this legislation and the regulations relating to it.

1650

Mr Ramsay: There could be a problem there. For instance — let's keep with the Metro example — they may not be in a position to make a final decision in the next two and a half months. Say the act is proclaimed January 1; I suppose they can still proceed until your regulations are written and given as orders in council.

You see, my thinking is that you must have some regulation in mind to bring the amendment. I mean, why would you bring forward an amendment that would allow you at a later date to write regulations to this act if you didn't have something in mind? What is it that you have in mind that you want to have this here today but that you can't tell us about?

Mr Galt: It's all about the protection of environment, whether it be natural, social, cultural, whatever. It's there, as we talked about earlier. Any regulation that's going to be brought in will be involved in consultation, will be on the Environmental Bill of Rights. It will be in front and we will listen as we have been with this bill. This is an amendment to allow that opportunity to write those regulations.

Mr Ramsay: Let's take an example of today. Today a municipality decides to contract with a company. You just can't go and get any company. The company has to have an approved site. I'm a municipality. We'd like to contract with a company for the disposal of waste. Obviously, I can only entertain those tenders from companies that have an approved destination. What would be different here from what we have today? We can't just dump garbage anywhere in Ontario; it has to be an approved site. It's passed either an EA or a class EA. We have so many sites that have certificates of approval issued by the ministry. What's the difference? We have the protection today, because we just can't put our garbage anywhere. We can use a private contractor today, but it obviously has to be to an approved site. What additional protection does this give us that we wouldn't have today?

Mr Galt: It's giving us the opportunity to write regulations, back to having concerns over environmental significant activities which have to do with the disposal of our waste.

Mr Ramsay: Under "Prohibition" it says, "No municipality shall proceed with an undertaking to dispose of waste unless the municipality obtains approval to proceed under this act." What does that mean? What approval would they have to get? What would be the process for this sort of approval?

Mr Chuck Pautler: If I could respond, the municipality that would own or control the waste would have to comply with the content requirements of the bill for an environmental assessment. That municipality would consider the alternatives involved in selecting the preferred disposal technique, whether it's through a contract to a third party, incineration or disposal at another facility. They would also consider the effects to the environment, as broadly defined in the act, associated with the transportation of the waste to the final disposal location.

In general, that would mean an assessment of rail versus road transportation if the final disposal site already

has an approval under the Environmental Assessment Act and has a valid certificate of approval to accept from the municipality that is proposing to enter into the contract. I would also expect that if the site has no environmental problems associated with it, if it's an integral site, the municipality's treatment of that approved site in the environmental assessment would be extremely cursory. There would not be double jeopardy associated here.

Mr Ramsay: Would this include a site in a foreign jurisdiction?

Mr Pautler: The purpose of the act and the scope of the application of the act apply to the boundaries of the province of Ontario. If it were a site outside of Ontario, I would expect the environmental assessment to document the impacts or the environmental effects to the province of Ontario of the final site, wherever it is. Again, those environmental effects would be broadly defined as per the definition that's contained in the current act, which has not been amended by this bill.

Mr Ramsay: Then Ontario, through this amendment, would not be making a judgement of a site in another jurisdiction?

Mr Pautler: I believe that's correct. But a proponent would be required to document the effects, as required by the act, to the province of Ontario of that other facility.

Mr Ramsay: Obviously then in this particular case, where we're talking about a site in a foreign jurisdiction, that would be the mode of transportation, the transfer stations, whatever it would require to get it to that site?

Mr Pautler: In part it would depend on the location of the site. If it were immediately adjacent, on the border of Ontario, one would have to look at the implications. But transportation would certainly be a factor. I would remind you that "environment" is broadly defined in the act. It includes the social, the economic and the cultural as well as the biophysical, the natural environment.

I'm just reminded that Ontario has intervened in waste disposal sites in other jurisdictions, the Niagara frontier being one, as well as —

Mr Ramsay: The incinerator in Detroit.

Mr Pautler: — Detroit.

Mr Ramsay: Because there's an impact on Ontario.

Mr Pautler: So there is some practice already and some precedent. The implication is to protect the environment of Ontario. That's what this is about.

Mr Galt: Earlier I emphasized concern about the environment of Ontario, but don't get me totally wrong; I also have some values as far as outside of Ontario is concerned. I do not want to see our garbage going to a site someplace in the US or Timbuktu that's going to cause environmental problems for someone else. Whether it says it in the act or not, I think we have some responsibility there; at least, I personally see that.

Mr Ramsay: Sure, and I agree with you in that case. When you keep harking back that you are looking at a very broad definition of the environment, so you're talking about the socioeconomic impact, is it then the intention of this, to look at it another way, to say that one of the choices Metro may have might have a beneficial economic impact on a region of Ontario and therefore you would require Metro to revisit such a decision that might not have, in your mind, taken that into account?

Mr Galt: I think all those aspects could be written into regulations.

Mr Ramsay: In other words, if Metro Toronto had the opportunity of entering into a contract with a private sector agent that could dispose of garbage, for instance, in northern Ontario, which that person might be able to prove has a beneficial impact on the economy, yet Metro ignores that and decides to send it to an American destination, in a sense you could use this amendment and the potential regulations coming from it as a roadblock to say, "You have ignored the economic impact of your decision in a positive way to Ontario by deciding to enter into a contract in a foreign jurisdiction." Is that following your logic?

Mr Galt: You're zeroing in on one aspect, being economic, and it's got to be a well-balanced one. Remember, this bill we're putting through is developing the terms of reference up front. It's getting the public involved again. We may be getting into the itty-bitty detail in this discussion when in fact we're looking at giving the public an opportunity for input. We are concerned that it is environmentally significant.

1700

Mr Ramsay: You talk about a consultation. I really appreciate that, because I think that's important. The bill would probably come into force, as you said, on January 1, something like that, of next year, and then you anticipate some sort of consultation with the public and municipalities about this. How long a consultation process do you anticipate?

Mr Galt: I do not have a specific at this point in time as to whether it would be written between now and January 1 or whether it would be after the first of the year. The usual time with the Environmental Bill of Rights registry —

Mr Pautler: Is 30 days.

Mr Galt: A 30-day announcement is standard.

Mr Ramsay: So the writing of regulations could be simultaneous with the passage of this bill?

Mr Galt: Sorry?

Mr Ramsay: What you seem to be implying there is that it's a possibility — I didn't understand this at first when you said that some time in the new year, after the bill has passed, potentially you might write some regulations based on this amendment. Now you seem to be saying that you could be starting to write some regulations simultaneous with the passage of this bill.

Mr Galt: I'm trying to say that there's not a specific time that regulations would necessarily be written because of this amendment. I do not have a time frame when regulations might be written. They could be written two years down the road.

Mr Ramsay: No, and that's a good point.

Mr Galt: It doesn't have to be for January 1.

Mr Ramsay: No, and because of this, and we're using Metro as an example, we've got an ongoing situation here that this amendment is causing them a lot of uncertainty. Could you do something to give some certainty to Metro that there would be some sort of time period before any such regulation comes into place? Right now you're wreaking havoc with their particular process by this, because they really don't know what, when and if

anything could come out this that could impact their present situation. Is there some way you could give us some certainty to say, "While we obviously reserve the right to write regulations based on the passage of this amendment, we're certainly not going to do so in the next six months"?"

What do you do with ongoing processes? As you know and you've alluded to, there's been a process going on for about seven years now with Metropolitan Toronto. After seven years of study and discussion, they're on the brink of making a decision and all of a sudden this appears, which is bringing a lot of uncertainty to that. Is there anything you could say today that could bring some certainty to, say, Metro Toronto, that no regulation is going to come out of this amendment that's going to disrupt a timely completion of this particular process?

Mr Galt: With your experience as a minister you'd be aware that regulations can be written at any time, and that's what this amendment is about, to give the opportunity to write those regulations. To give you some time frame when they might or might not be written, I think you're quite aware that they could be written to come into effect at the time of royal assent or they may come in X number of months or years down the road.

Mr Ramsay: Can you assure me today that there will be no regulations written under this amendment until those regulations are thoroughly aired and discussed through a consultation process with Ontario municipalities?

Mr Galt: What I can assure you is that there'll be no regulations prior to January 1 coming into effect, and what I can also assure you is that there'll be extensive consultation with Metro, with AMO, with the waste management association, and it will be on the Environmental Bill of Rights registry certainly for the 30-day period. Usually there's consultation prior to that to write them and then it's on the EBR registry for the 30-day period for further comment. That I can assure you.

Mr Ramsay: Thank you very much.

The Chair: Further debate? I'll call the question. Those in favour of the motion? Those opposed? The motion is passed.

That completes section 3. Shall section 3, as amended, carry? Could I have a show of hands, please? Those opposed? The section carries.

We now begin with section 4, and the first motion is a Liberal motion.

Mr Ramsay: I move that subsection 4(1) of the bill be struck out.

This amendment reinstates the wording of the current act, which requires that the EA board members not be ministry employees. The reason for having a quasi-judicial board is to have a decision-making process independent of the ministry, as is the case with other boards such as the OMB. Allowing ministry employees as appointees limits the independence of the board. So it's just a matter of having some certainty that we would have full independence on the EA board from the ministry.

The Chair: Debate?

Mr Ramsay: Dr Galt, do you accept that that's a pretty sound principle, though, that you would want to have —

Mr Galt: No.

Mr Ramsay: Then why would we have an EA board as a quasi-judicial agency to study these matters separate from the ministry?

Mr Galt: We just believe that this section is needed to clarify the composition of the board.

Mr Ramsay: But wouldn't it be advantageous to the process to give certainty to the independence of the process, to just ensure that it is completely separate, that we don't have any overlap by having ministry employees on the board?

Mr Galt: The feeling is that it's limiting the people who can sit on there, and we believe there are quality people in the civil service who might be advantageous to serve on that particular board.

Mr Ramsay: So out of nearly 11 million people in the province of Ontario, you don't have confidence that we could find — how many sit on the board? 12? What's the number?

Mr Galt: It's 16 or 17.

Mr Ramsay: So what you're saying is that out of almost 11 million people now in this province we could not find 16 or 17 people, other than ministry employees, who are knowledgeable enough and concerned enough about the environment to sit on the board.

Mr Galt: Possibly your concerns relate to those who are sitting on the board. There are conflict-of-interest regulations that prevail. We recognize that we have some exceptional people who work in the civil service and we would prefer that they weren't excluded from this process.

The Chair: Further debate? Those in favour of the motion? Those opposed? The motion is defeated.

A government motion.

Mr Galt: I move that section 18 of the Environmental Assessment Act, as amended by subsection 4(5) of the bill, be further amended by adding the following subsections after subsection (17.2):

"Hearings

"(17.3) The board may render a decision without a hearing and may do so even though a matter is referred for hearing and decision.

"Validity of decision

"(17.4) A decision of the board is not invalid solely on the ground that a matter was not addressed by testimony at a hearing."

This provision clarifies that a formal hearing may not be necessary for the board to render a decision.

The Chair: Debate? Hearing none, I'll call the question. Those in favour of the motion? Those opposed? Motion carries.

Shall section 4, as amended, carry? Those in favour? Those opposed? Section 4, as amended, carries.

Section 5, no amendments. Shall section 5 carry? Carried.

Shall section 6, with no amendments, carry? Carried. We have amendments for section 7. A Liberal motion.

Mr Ramsay: I move that section 27.1 of the Environmental Assessment Act, as set out in section 7 of the bill, be amended by adding the following subsection:

"Same

"(2) If the minister proposes to issue policy guidelines, the minister shall give adequate public notice of the

proposed guidelines and shall ensure that members of the public have an opportunity to comment on them."

This amendment ensures that the policy guidelines are defined and developed in an open process with full public consultation.

1710

Mr Galt: We agree with this in theory. The public currently has the opportunity to comment on the ministry policies and guidelines which are placed on the Environmental Bill of Rights registry; therefore, we believe this amendment is unnecessary.

The Chair: Further debate? I will call the question. Those in favour of the motion? Those opposed? The motion is defeated.

Section 7, unamended, shall it carry? Carried.

Section 8, unamended, shall it carry? Carried.

Section 9, as is, without amendments? Carried.

Section 10. We have a government motion for amendment.

Mr Galt: I move that subsection 10(2) of the bill be struck out and the following substituted:

"(2) Subsection 30(2) of the act is repealed and the following substituted:

"Same

"(2) The director shall maintain a record for the following matters:

"1. A proposed order under section 3.1.

"2. A proposed declaration under section 3.2.

"3. An undertaking in respect of which an order under section 16 is proposed.

"Inspection

"(3) Upon request, the director shall make available for inspection any record referred to in this section including any document that forms part of the record and shall make a document available as soon as practicable after the document is issued or received."

This provision rounds out the information to be included in the public record.

The Chair: Debate? Hearing none, I will call the question. Those in favour of the motion? Those opposed? The motion passes.

Shall section 10, as amended, carry? Those in favour? Those opposed? Carried. Section 10 carries.

Section 11. A government motion.

Mr Galt: I move that subsection 31(2) of the Environmental Assessment Act, as set out in subsection 11(2) of the bill, be struck out and the following substituted:

"Delegation

"(2) Subject to subsection (2.1), the minister may delegate to an employee or class of employees in the ministry any power conferred or duty imposed on the minister under this act and may impose limitations, conditions and requirements on the delegation.

"Same

"(2.1) The minister shall not delegate the following powers:

"1. The power to approve terms of reference under subsection 6(3).

"2. The power to make decisions under subsection 10(1).

"3. The power to refer decisions or matters to the board.

"4. The power under section 11.3 to reconsider a decision. However, the minister may make a delegation to the board as provided in that section."

We have heard concern expressed about the extent to which the bill allowed the minister to delegate certain decisions, and we agree. This provision specifies that the minister cannot delegate the authority to approve terms of reference. Approval decisions, referrals to the board or the reconsideration of a decision have to be made by the minister.

The Chair: Debate? There being none, I call the question. Those in favour of the motion? Those opposed? The motion carries.

Shall section 11, as amended, carry? Carried.

Section 12 has an amendment, Liberal and NDP. Ms Martel, would you like to carry this one?

Ms Martel: Can we deal with that after?

The Chair: Okay. We'll come back to that.

The first amendment is to section 12 of the bill, and following that we'll go to the very first page, which was a postponed amendment on section 1.

Ms Martel: I move that subsection 31.1(3) of the Environmental Assessment Act, as set out in section 12 of the bill, be struck out.

Mr Ramsay: This is similar to our amendment in subsection 1(1) that we would be dealing with next. This amendment ensures that the minister does not appoint directors who are not employees of the Ministry of Environment. For example, it would create a biased situation if Ministry of Transportation employees were to be appointed as directors of highway projects subject to an environmental assessment. That's our concern and that's why we've moved this amendment.

Ms Martel: If I can add to that, the government is doing this in another bill at the same time, which is the resources bill, trying to delegate responsibility to persons other than ministry employees, very important responsibilities that they have. We would much prefer that it be very clear that the people who carry out this important work are going to be public servants.

Mr Galt: We can support their amendment.

The Chair: Let me ask the question. Those in favour of the motion? Those opposed? The motion carries.

We go back to subsection 1(1). Subsection 1(1) now would have eligibility. It was postponed. Can I ask, Mr Ramsay, if you'd deal with that one, please.

Mr Ramsay: I move that the definition of "director" in section 1 of the Environmental Assessment Act, as set out in subsection 1(1) of the bill, be struck out and the following substituted:

"'director' means an employee of the ministry appointed under section 31.1 to act as a director;"

I want to take it that this would be consistent with what we've just passed.

Mr Galt: I guess the only question would be, is it necessary? I'm asking that as a question; I'm not debating the issue. Is it automatic?

Ms Martel: That a motion has to be moved?

Mr Galt: That we go back to this item, subsection 1(1). I'm not opposed to it. We'll support it.

The Chair: We'll ask legislative counsel to comment on it, Dr Galt.

Mr Ramsay: Legislative counsel could answer that.

Ms Hopkins: As a result of the motion that you just passed, this motion is not necessary in law. You've already achieved this outcome.

The Chair: All right. So you withdraw that amendment.

Mr Ramsay: Yes.

1720

The Chair: Can we say, because we had waited for a postponed amendment, shall section 1, as amended, carry? Section 1, as amended, carries.

Shall section 12, as amended, carry? Carried.

Shall section 13, as is, carry? Carried.

Shall section 14, as is, carry? Carried.

Shall section 15, as is, carry? Carried.

Section 16. There is a Liberal-NDP amendment. Who would like to move that?

Mr Ramsay: I move that section 16 of the bill be amended by adding the following section to the Environmental Assessment Act after section 37.2, as set out in section 16 of the bill:

"Public notice requirements

"37.3(1) A public notice under this act must provide clear, timely and concise information.

"Same

"(2) Each public notice must meet such requirements as may be prescribed.

"Access to information

"(3) Upon request, a person is entitled to have free and timely access to all documents that relate to the subject matter of a public notice given under this act."

This amendment ensures that there are clear, timely and appropriate public notices to the public on the stages of the project under the EA process. This ensures that those affected have access to all the documents prepared in support of this project.

Ms Martel: If I might just add, as I look at the section that appears in the government bill, it makes it very clear that there is a limitation to who would receive the notice or the document. It limits it clearly to the clerk and lists a number of levels of government. The amendment put forward makes it clear that people who have an interest, who are concerned one way or the other about what is happening, are going to be able to receive any information with respect to that particular project and that it is not limited solely to specific persons within a municipality or other level of government.

Mr Galt: This motion, we believe, is redundant because the public already has access to information under section 10 to the public record of this bill, and through the freedom of information act public notice requirements can already be prescribed. We don't believe it's really needed.

Ms Martel: I ask the parliamentary assistant why there is such a limitation as outlined in the bill that you've put forward. While you've just told us that the public can have access under different sections of the bill, clearly there is a limitation here. I'm wondering, if that's the case, why you'd put that in.

Mr Jim Jackson: I expect the member is referring to section 37 of the act, as set out in section 16 of the bill. That doesn't restrict notices to be given to the public.

There are several places in the bill that require notices to be given to clerks of municipalities. There is a broad definition of "municipality" already in the act.

What this does is make it clear that you don't have to give notices to the clerks of the broadly defined municipalities: all the library boards, other local boards that might be within the municipalities. You only have to give it directly to the clerk of the local municipality or the upper-tier municipality and not to everybody else. There might be dozens of local boards in the city of Toronto, for example, and it might be administratively difficult to find out who they all are in every case, but it's not difficult to figure out who the upper- and lower-tier municipalities are. I think it's possible that the section may have been misconstrued.

Ms Martel: Okay. Thank you.

The Chair: Further debate? Seeing none, I'll call the question. Those in favour of the motion? Those opposed? The motion is defeated.

Ms Martel: I move that section 16 of the bill be amended by adding the following section to the Environmental Assessment Act after section 37.2, as set out in section 16 of the bill:

"Consultation

"37.4 In circumstances in which consultation is required under this act or is advisable in view of the purpose of this act, the proponent of an undertaking shall consult with the following persons, whether or not they have a direct personal, pecuniary or proprietary interest in the undertaking:

"1. Representatives of first nations communities that might reasonably be interested in or be affected by the undertaking.

"2. Municipalities that might reasonably be affected by the undertaking.

"3. Representatives of unorganized territories that might reasonably be affected by the undertaking.

"4. Such other persons as may be interested in or be affected by the undertaking."

The point of the amendment is to ensure that significant issues that are of public concern will be given due recognition by the public, that a number of groups that may have an interest will be advised and will be consulted and that scope of reference for the proponent not be limited, but we'll try and be very inclusive in order to mitigate against any circumstances or concerns or anything else that might be raised during the time. It does make sure that the concerns are met, you get the public on side and the project hopefully will move forward in a reasonable way.

The Chair: Debate? There being none, I'll ask the question. Those in favour of the motion? Those opposed? The motion is defeated.

Does section 16, as is, carry? Carried.

Does section 17, as is, carry? Carried.

Does section 18, as is, carry? Carried.

Does section 19, as is, carry? Carried.

Does section 20, as is, carry? Carried.

Does section 21, as is, carry? Carried.

I know there's an amendment, as recommended, but it follows the section, so you can still put forward your amendment on this.

Does section 22, as is, carry? Carried.

There is a Liberal and NDP — they're not the same? Mr Ramsay on the Liberal motion on section 22.

Mr Ramsay: I move that the bill be amended by adding the following section:

"Intervenor Funding Project Act

"22.1(1) Subject to subsection (2), the Intervenor Funding Project Act, as it read immediately before its repeal, shall be deemed to continue in force until December 31, 2000.

"(2) Subsection 16(1) of that act shall be deemed to be amended to provide for the repeal of the act on December 31, 2000."

The Chair: I have to notify you that it is out of order in that the Intervenor Funding Project Act does not exist and it's not a part of this particular bill. It's beyond the scope of this bill, so I have to rule on it that it doesn't —

Mr Ramsay: Is this because it involves spending taxpayers' dollars?

The Chair: No.

Mr Ramsay: Then why is it —

The Chair: Because you're referring to an act that doesn't exist and isn't part of this particular bill. It goes beyond the scope of the bill.

Mr Ramsay: Okay.

The Chair: Which applies likewise, Ms Martel, to your amendment.

Shall section 23, as is, carry? Carried.

Shall section 24, as is, carry? Carried.

Shall the title of the bill carry? Carried.

Shall the bill, as amended, carry? Carried.

Shall I report Bill 76, An Act to improve environmental protection, increase accountability and enshrine public consultation in the Environmental Assessment Act, as amended, to the House? Good, thank you. All right, that I shall be happy to do. Carried.

Thank you very much for your cooperation, everyone. We stand adjourned until the call of the Chair.

The committee adjourned at 1729.

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STANDING COMMITTEE ON SOCIAL DEVELOPMENT

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*Mr Peter L. Preston (Brant-Haldimand PC)
*Mr Bruce Smith (Middlesex PC)

**In attendance / présents*

Substitutions present / Membres remplaçants présents:

Mr Bud Wildman (Algoma ND) for Mr Cooke
Mr Gary Fox (Prince Edward-Lennox-South Hastings /
Prince Edward-Lennox-Hastings-Sud PC) for Hon Janet Ecker
Mr Jean-Marc Lalonde (Prescott and Russell / Prescott et Russell L) for Mr Gravelle
Mr Doug Galt (Northumberland PC) for Mrs Johns
Mr David Ramsay (Timiskaming L) for Mr Kennedy
Ms Shelley Martel (Sudbury East / -Est ND) for Ms Lankin
Mr Ed Doyle (Wentworth East / -Est PC) for Mrs Munro
Mrs Lillian Ross (Hamilton West / -Ouest PC) for Mr Newman

Also taking part / Autres participants et participantes:

Mr Leo FitzPatrick, counsel, legal services branch, MOEE
Mr Jim Jackson, director, legal services branch, MOEE
Mr Chuck Pautler, director, environmental assessment branch, MOEE

Clerk / Greffière: Ms Lynn Mellor

Staff / Personnel: Ms Laura Hopkins, legislative counsel

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Legislative Assembly of Ontario

First Session, 36th Parliament

Assemblée législative de l'Ontario

Première session, 36^e législature

Official Report of Debates (Hansard)

Tuesday 22 October 1996

Journal des débats (Hansard)

Mardi 22 octobre 1996

**Standing committee on
social development**

**Comité permanent des
affaires sociales**

Organization

Organisation



Chair: Richard Patten
Clerk: Tonia Grannum

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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON
SOCIAL DEVELOPMENT

Tuesday 22 October 1996

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DES
AFFAIRES SOCIALES

Mardi 22 octobre 1996

The committee met at 1536 in room 151.

ORGANIZATION

The Chair (Mr Richard Patten): Let me say welcome to everyone. We will have some new members on the committee, I suspect. Our purpose today is to amend the membership of the subcommittee. That requires the approval of this committee. Therefore, I understand we have some motions to that effect and I'll entertain those now.

Mr Michael Gravelle (Port Arthur): I move that the membership of the subcommittee on committee business be amended by substituting Mr Cooke for Mr Wildman as the New Democratic member of the subcommittee.

The Chair: All those in favour?

Mr David S. Cooke (Windsor-Riverside): I was going to vote no.

The Chair: That has passed.

Mr Dan Newman (Scarborough Centre): I move that the membership on the subcommittee on committee busi-

ness be amended by substituting Mrs Johns for Mrs Ecker as the Conservative member of the subcommittee.

The Chair: All in favour? Unanimous. That is passed.

I welcome Mrs Johns and Mr Cooke to the committee. I know you will enjoy this committee because there is a fine group of members on it and we usually have exciting and important business to do.

I would also like to say I'm looking forward to working with our new clerk. There was a clerk shuffle and Tonia Grannum will now be our clerk. I know that we will work as effectively, as efficiently and as cooperatively as we did with Lynn. I would like, on our behalf, to extend to Lynn Mellor, our former clerk, our appreciation for the very fine work she did on behalf of this committee.

Is there any further business? There being none, we will adjourn this meeting and resume at the call of the Chair.

The committee adjourned at 1539.

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Tuesday 22 October 1996

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STANDING COMMITTEE ON SOCIAL DEVELOPMENT

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- *Mr Bruce Smith (Middlesex PC)

**In attendance / présents*

Substitutions present / Membres remplaçants présents:

- Mr Carl DeFaria (Mississauga East / -Est PC) for Mr Jordan
- Mrs Brenda Elliott (Guelph PC) for Mrs Munro

Clerk / Greffière: Ms Tonia Grannum

Staff / Personnel: Mr Ted Glenn, research officer, Legislative Research Service

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON
SOCIAL DEVELOPMENT

Tuesday 22 October 1996

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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON
SOCIAL DEVELOPMENT

Tuesday 26 November 1996

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DES
AFFAIRES SOCIALES

Mardi 26 novembre 1996

The committee met at 1543 in room 151.

SUBCOMMITTEE REPORTS

The Chair (Mr Richard Patten): Let's convene the meeting of the social development committee. Our first item of business is the report of the subcommittee on committee business which met yesterday. Mr Gravelle, will you read the report into the record?

Mr Michael Gravelle (Port Arthur): I would be pleased to read this into the record. I'll read the first part, which I understand has the mandatory elements of the report.

"Your subcommittee on committee business met on Monday 25 November 1996 on a matter designated pursuant to standing order 125 by Michael Gravelle, MPP (Lib), and agreed as follows:

"(1) That the precise statement identifying the 125 designation read as follows:

"The impact of the Conservative government's funding and funding cuts on persons with disabilities and their families. The hearings should focus on all government-funded services provided to people with disabilities and their families.

"(2) That 10½ hours be allotted for presentations by witnesses, one half-hour be allotted for initial direction to the research office on the first draft of committee's report and one hour be allotted to finalize and approve the committee's report to be presented to the House.

"(3) That the meetings on this subject matter commence on Monday 3 February 1997 (if this date is during the winter recess, then a request be sent to the House leaders asking that the committee be allowed to sit to commence its designation).

"If the House continues to sit in January then the committee would meet concurrently with the House on its regular sitting days to commence the meetings on the designation.

"(4) That the following identified witnesses be invited to appear:

"Veronica Manuel

"ARCH

"Ontario Association of Community Living

"Head Injury Association of London, Gary Davies.

"That additional lists of witnesses from each caucus are to be filed with the clerk of the committee by Monday 9 December 1996."

The Chair: This report is deemed to be adopted.

Mr David S. Cooke (Windsor-Riverside): Just one question. Weren't we actually talking about January 6, or are we leaving that for any particular reason? It just says "January."

Mrs Helen Johns (Huron): My concern with that is if we're not sitting on January 6, we don't want to start committee hearings then, if the House leaders decide it's a different date in January. I wanted to leave the date open and it be the day we start to sit in the House.

Mr Gravelle: I think as long as that's understood.

The Chair: It's our regular sitting day, whenever that date is.

Mr Cooke: This doesn't really say a beginning day in that paragraph.

Mrs Johns: All right.

Mr Cooke: If you want to say "when the House reconvenes" or "on the day that it reconvenes," fine, but it leaves it —

The Chair: Mr Cooke, "on its regular sitting days to commence the meetings on the designation."

Mr Cooke: That would be the first week back.

The Chair: Yes. If it is, then it covers that.

We have another report from the subcommittee. This one is open for discussion and debate. Mr Gravelle, would you read that report.

Mr Gravelle: "Your subcommittee on committee business met on Monday 25 November 1996 on a matter designated pursuant to standing order 125 by Michael Gravelle, MPP (Lib), and further agreed as follows:

"(1) That each witness be allotted one half-hour for their presentation.

"(2) That witnesses be scheduled by the clerk in consultation with the Chair.

"(3) That the research officer prepare related press clippings as background information and that research officer contact the appropriate ministries involved with the subject matter to obtain relevant information."

"(4) That authorization be given to the Chair and the subcommittee to approve the draft report.

"(5) That the final committee report on the designation be translated.

"(6) That requests for payment of witness expenses be brought on a case-by-case basis to the Chair and the subcommittee for final decision."

The Chair: I need a motion for that first and then we can debate it. Will someone move it?

Mr Gravelle: I move that this report be accepted.

Mrs Johns: I believe both Mr Cooke and I had a concern about number 6 in the fact that we wanted to express some focus on electronic and that's not related here. Is that a problem? Does that usually come into the discussion paper here?

The Chair: Perhaps what we can do is you can share with the committee the concerns raised, because there was an understanding that those considerations would be followed.

Mrs Johns: I would like to see number 6 say something like: "That requests for payment of witness expenses be brought on a case-by-case basis to the Chair and the subcommittee for final decisions. When witnesses are identified, we would ask a number of questions to discuss the availability of electronic media" —

Mr Cooke: Why not just put something after this? "The option of teleconferencing" —

The Chair: Or videoconferencing.

Mr Cooke: "or videoconferencing should be offered to out-of-town witnesses." Is that okay?

The Chair: Yes.

Mrs Johns: Thank you.

Mr Gravelle: Can I just say in terms of —

The Chair: The phrasing of this?

Mr Gravelle: Yes and whether or not it is necessary to add this to the list. There's something else I want to ask the research officer, Mr Glenn, to look at.

The Chair: I'll get back to you in a moment.

Clerk of the Committee (Ms Tonia Grannum): Shall I read it?

The Chair: Yes.

Clerk of the Committee: "(6) That requests for payment of witness expenses be brought on a case-by-case basis to the Chair and the subcommittee for final decision and that the option of teleconferences or videoconferences be offered as alternatives to witnesses."

The Chair: That's an amendment to the motion. Is everyone in agreement with the amendment? All in favour? It's passed.

Further discussion?

Mr Gravelle: This may not be necessary, because I'm sure that the research officer will be asking this information. But number 3, where it talks about "that research officer contact the appropriate ministries involved with the subject matter to obtain relevant information," one of the areas I certainly want to be able to check on is, I want to have it asked, if possible, "Have there been any programs that are funded for disabled individuals in our province that have been disbanded, have closed down?" That perhaps goes without saying, but I think it's an important question to ask.

Mr Ted Glenn: It's specified in the survey that's going out.

Mr Gravelle: All right. That's fine.

The Chair: Any further comments? A motion to accept the report, as amended? Mr Cooke. All in favour? It's adopted.

Any other items? There being no other items, we will adjourn the committee meeting. I suspect we may not be sitting till after Christmas, so I want to wish you personally all the very best.

The committee adjourned at 1551.

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